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ADMINISTRATION OF JUSTICE IN THE PROVINCIAL COURTS OF ALBERTA

Alberta

BOARD OF REVIEW

Provincial Courts

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REPORT NO. 2

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BOARD OF REVIEW

Provincial Courts

Mr. Justice W. J. C. Kirby, Chairman

Dr. M. Wyman

J. E. Bower, Esq.

J. L. Lewis, Esq., Counsel

Emile Gamache, Esq., Secretary

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BOARD OF REVIEW

ADMINISTRATION OF JUSTICE IN THE PROVINCIAL COURTS OF ALBERTA

TERMS OF REFERENCE OF REPORT NO. 2

Item 1

What should be the respective roles and relationships of the Provincial Court Judges, the Prosecutors, the Clerks of the Court and the Police in the administration of justice in these Courts;

Item 3

What changes, if any, should be made in the practice and procedures used in obtaining search warrants and the handling of the material seized;

Item 6

Whether Judges should receive some initial and continuing training in their duties;

Item 7

Whether it would be desirable to appoint a Chief Judge of the Provincial Court or Senior Judges and if so, what should be their duties;

Item 8

Whether any changes should be made in the system of establishing or operating Circuit Courts;

Item 9

Whether the Provincial Court Judges presently presiding in the Provincial Courts of Edmonton and Calgary should travel on circuit and whether the Provincial Court Judges presiding in rural areas should from time to time sit in the Provincial Courts in urban centres;

Item 13

Whether any changes should be made in the procedures followed by the Clerks of the Provincial Courts in the performance of their administrative duties;

Item 14

Whether present facilities in remote areas provide satisfactory judicial services;

Item 15

Whether the present system of issuing Warrants of Committal against persons who default in payment of fines for Provincial offences is desirable or necessary and if so, whether any changes should be made in the processing or enforcement of such Warrants;

Item 16

Whether the present system of levying fines against persons convicted of traffic offences should be continued and if not, whether a Traffic Violation Report System similar to that in use in the Province of British Columbia should be adopted;

Item 17

Whether it is desirable to treat infractions of municipal bylaws as offences in Provincial Courts and whether the collection of penalties provided for in bylaws for such infractions should be effected in the Small Claims Court or some other court of civil jurisdiction;

Item 18

Such other matters as may be deemed relevant by the Board of Review in order to ensure a full and fair inquiry and to enable it to make a report and such recommendations as it deems fit.

To His Honour,

The Lieutenant Governor of the
Province of Alberta.

May it please Your Honour:

Having been appointed by Order-in-Council dated the 5th day of June, 1973, a Board of Review under The Public Inquiries Act, to review the operation of the Provincial Courts, and to report thereon, we have submitted to Your Honour Report No. 1, with respect to Items 4, 5 and 6 of the terms of reference.

We now submit to Your Honour, Report No. 2, with respect to Items 1, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17 and 18.

August 6th, 1975

Chairman

Member

Member

Approved and Ordered,

LIEUTENANT GOVERNOR

O.C. 867/73

Edmonton

June 5, 1973

WHEREAS it is expedient and in the public interest to have a review of the administration of justice in the Provincial Courts of Alberta:

THEREFORE, upon the recommendation of the Honourable the Attorney General, the Lieutenant-Governor-in-Council by these presents, nominates, constitutes and appoints, pursuant to the provisions of The Public Inquiries Act, a Board of Review consisting of MR. JUSTICE W. J. C. KIRBY, Calgary, of the Trial Division of the Supreme Court of Alberta, DR. M. WYMAN, President of the University of Alberta, Edmonton, and J. E. BOWER, Editor of the Advocate, Red Deer, members, with MR. JUSTICE KIRBY as Chairman, to review the operation of the Provincial Courts and to report thereon to the Lieutenant-Governor-in-Council and in particular to review and report on

1. what should be the respective roles and relationships of the Provincial Judges, the Prosecutors, the Clerks of the Court and the Police in the administration of justice in these Courts;
2. whether any changes should be made in the administration of justice in the Juvenile and Family Courts and if so, what should be the respective roles of the Judges, Lawyers, Court Counsellors, Probation Officers, Clerks of the Court and other officers and officials of those Courts;
3. what changes, if any, should be made in the practice and procedures used in obtaining search warrants and the handling of the material seized;
4. whether any changes should be made in the practices and procedures presently being followed in the offices of the Coroners and with respect to inquests;

5. whether any changes should be made to The Coroners Act;

6. whether Judges and Coroners should receive some initial and continuing training in their duties;

7. whether it would be desirable to appoint a Chief Provincial Judge or Senior Judges and if so, what should be their duties;

8. whether any changes should be made in the system of establishing or operating Circuit Courts;

9. whether the Provincial Judges presently presiding in the Provincial Courts of Edmonton and Calgary should travel on circuit and whether the Provincial Judges presiding in rural areas should from time to time sit in the Provincial Courts in urban centres;

10. whether the present practice of allowing Provincial Judges in rural areas to deal with juvenile offenders is desirable or necessary;

11. whether any changes should be made in the procedures followed in the enforcement of maintenance orders in the Family Courts or in any of the other procedures of those Courts;

12. whether lawyers of the Juvenile and Family Courts should act for either side in dispute matters;

13. whether any changes should be made in the procedures followed by the Clerks of the Provincial Courts in the performance of their administrative duties;

14. whether present facilities in remote areas provide satisfactory judicial services;

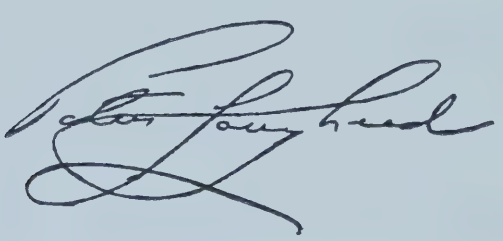
15. whether the present system of issuing Warrants of Committal against persons who default in payment of fines for provincial offences is desirable or necessary and if so, whether any changes should be made in the processing or enforcement of such Warrants;

16. whether the present system of levying fines against persons convicted of traffic offences should be continued and if not, whether a Traffic Violation Report System similar to that in use in the Province of British Columbia should be adopted;

17. whether it is desirable to treat infractions of municipal by-laws as offences in Provincial Courts and whether the collection of penalties provided for in by-laws for

such infractions should be effected in the Small Claims Court or some other court of civil jurisdiction;

18. such other matters as may be deemed relevant by the Board of Review in order to ensure a full and fair inquiry and to enable it to make a report and such recommendations as it deems fit.



CHAIRMAN

ACKNOWLEDGMENTS

The Board has been ably assisted by J. L. Lewis, counsel to the Board. We are grateful to Emile Gamache, secretary to the Board for the efficient manner in which he has attended to administrative arrangements. We acknowledge the services of Stanley Carscallen who has rendered valuable assistance in research and summarizing transcripts of the hearings.

The Board expresses thanks to the Deputy Attorney General and the officials in that department for the assistance and co-operation which has been accorded at all times; to the clerks of the court in Grande Prairie, Red Deer, Edmonton, Calgary, Lethbridge, Medicine Hat, Fort Macleod, Wetaskiwin and Peace River for providing accommodation for the public hearings.

We acknowledge the benefit of frequent reference to the McRuer Report and to the reports of the Ontario Law Reform Commission.

We are particularly grateful for courtesies and assistance extended to the Board by the following:

British Columbia — His Honour Chief Judge L. C. Brahan

His Honour Judge P. S. Millar

David H. Vickers — Deputy Attorney General

J. N. Cram — Vice Chairman, Justice Development Commission

W. R. Adamson — liaison officer Berger Royal Commission on Family and Children's Law

Gary Summers — family advocate

N. Jane Auxier — family advocate

R. A. Hadfield — Supervisor, Motor Vehicle Branch, Department of Highways

N. A. McDiarmid — Director of Criminal Law (now provincial judge)

Dr. Malcolm Matheson — Chairman, Justice and Research Planning Unit

David Mead — member, Justice and Research Planning Unit

Hal Fulbrook — Court Administrator

Miss L. Holmgren—Court Administrator

Vincent Moore — Chief Court Reporter

Roy Ballem — Sheriff, Provincial Court, Vancouver

Carole McDonald — in charge electronic recording, Provincial Court, Vancouver

Ontario — His Honour Chief Judge F. C. Hayes

H. A. Leal, Q.C., Chairman, Ontario Law Reform Commission

Honourable James C. McRuer, member Ontario Law Reform Commission

H. F. Morton — North York Traffic Tribunal

Quebec — His Honour Chief Judge Alan B. Gould

André Desjardins, Q.C. — Associate Deputy Minister of Justice

Yvon Lussier — Assistant to Court Administrator, Montreal

Lise Beaulieu — head of stenographic pool, law courts, Montreal

Dorothy Mockler — stenographer, law courts, Montreal

Denis Gaumond — head, computer section for traffic tickets, Quebec

Nova Scotia — Pat Martin, Chief of Recording Services, law courts, Halifax

Finally, the Board of Review would like to express its appreciation to Professor A. A. Ryan, Provost of The University of Alberta, for editing the manuscript.

PROCEEDINGS OF THE BOARD

Hearings were held at the following places on the dates shown:

Grande Prairie	—	October 15th, *1973*
Red Deer	—	October 18th
Edmonton	—	October 22nd - 26th
Calgary	—	November 12th - 16th
Lac la Biche	—	November 28th
St. Paul	—	November 29th - 30th
Lethbridge	—	December 3rd
Medicine Hat	—	December 6th
Edmonton	—	January 24th-25th, *1974*
Calgary	—	April 8th - 11th
Edmonton	—	April 16th - 20th
Fort Macleod	—	April 29th - 30th
Wetaskiwin	—	May 2nd - 3rd
High Level	—	May 6th - 7th
Peace River	—	May 9th
Slave Lake	—	May 13th
Fort McMurray	—	May 16th

In excess of 250 briefs were submitted by various organizations and individuals.

In Alberta, the Board visited the Provincial Court houses in Edmonton and Calgary. The Board also visited several courtrooms in rural areas.

In British Columbia, the Board met with some of the judges of the Provincial Court, the Deputy Attorney General, and some of the officials of his department. It also met some of the staff members of the Royal Commission on Family and Children's Law, and some of the members of the staff of the Vancouver municipal courts.

In Ontario, the Board met with the Chief Judge of the Provincial Court, and some of the members of the Ontario

Law Reform Commission. It also visited the North York traffic tribunal.

In Quebec, the Board met with the Associate Chief Judge of the Provincial Court and the Associate Deputy Minister of Justice. It saw the electronic recording facilities used by the Montreal Law Courts, and toured the computer section used to process traffic tickets.

In Nova Scotia, the Board saw the electronic recording services used by the Halifax law courts.

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INTRODUCTION

When we were appointed to a board to review the operation of the Provincial Court, we had no idea of the magnitude of the problems confronting us: the lack of identity and prestige of the Provincial Court; the impossible workload of the judges and Crown prosecutors; the demands made upon underpaid and overworked court clerks; the undesirable identification of the judges as instruments of the attorney general's department and of the court as a *police court*; the congestion, the delays, the enormous case loads in Edmonton and Calgary; the dreadful inadequacy of the court facilities in Edmonton and elsewhere in the province. These are but examples of problems we found that call for urgent solution.

It is our hope that no time will be spent trying to assess blame. In the 70-year history of this province, no one government, no one generation of public officials is responsible for the low status accorded the Provincial Court. We are critical in our report, but not of the police, the bar, the bench or the Government. Indeed, all of them have made pleas to us for help and changes to make it possible to do their jobs better. Dedicated people are being asked to cope with mountains of work, much of it trivial, in inadequate space, and with pitifully inadequate staff.

We repeat that we do not blame the workers in the field. Part of the blame is due to historical reasons, part to years of neglect and part to public apathy. We are grateful to the present government for allowing us to call attention to a situation that cries for correction.

Most citizens lack any direct contact with the criminal legal process. It is easy for us to live in ignorance of that process and of the immediate and dire consequences that it has daily on the lives of scores of people — consequences for all of us if that process falters or fails. Justice is a concept that only strikes home when it involves ourselves, yet we must understand that our agencies of justice are basic to a democratic society. For years the Provincial Court of Alberta, or its equivalent, has been starved financially. After years of neglect, its problems have accumulated to the point where justice is not being served effectively. Sweeping changes must be implemented without delay.

No individual board of review could presume to study the problems of today's Provincial Court and make informed recommendations on all the changes that might be needed.

We neither pretend to present thoughts that have not been thought or presented before, nor to have made a definitive in-depth study. We are conscious that our study may be seriously incomplete, even superficial. Much much more remains to be done before the Provincial Court can attain the standards to which it ought to aspire.

We are confident, however, that if the recommendations we submit are implemented they will go a long way toward resolving the most pressing problems brought to our attention.

In Report No. 1, the Board of Review dealt with Items 4, 5 and 6 of the Terms of Reference pertaining to the Coroner's Act.

In this Report No. 2, the Board will deal with Items 1, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17 and 18 of the Terms of Reference.

Two other Reports will follow. In Report No. 3, the Board of Review will deal with Items 2, 10, 11, 12 and 18 of the Terms of Reference; items relating to the juvenile and family courts. Our last report will discuss some of the problems our native people have with the Provincial Court.

As a footnote, we should explain that, in this Report, direct quotations are printed in italics. Quotation marks are not used.

HISTORICAL BACKGROUND

The origin of the Provincial Court in Alberta is to be found in an act of the Imperial Parliament enacted in 1803 which extended the jurisdiction of the courts of Lower Canada to the territories not within the limits of Upper or Lower Canada. The act provided for the appointment by the Governor of Lower Canada of magistrates and justices of the peace.

Further imperial legislation, enacted in 1821, extended the jurisdiction specifically to the territories then being administered by the Hudson's Bay Company under Royal Charter granted by Charles II to Prince Rupert and his associates. It empowered the Crown to appoint justices of the peace *to sit and hold Courts of Record for the Trial of Criminal Offences . . .*

Provision first was made for the appointment of judicial officers for the North West Territories by Canadian authority in The Dominion Statutes of 1873, which provided for the appointment by the Governor-General of one or more stipendiary magistrates having the authority of two justices of the peace. This same act provided for the organization of the North West Mounted Police. It also provided that the commissioner and each superintendent of the police should be ex officio a justice of the peace.

Among the duties assigned to the force by the statute was *to attend upon any Judge, Stipendiary Magistrates, or Justices of the Peace when thereunto specially required.*

By an amendment in 1874, the commissioner of the police was given the powers of a stipendiary magistrate, and in 1879 these powers were extended to the assistant commissioner.

The close identity of the magistrates with the executive authority is to be found in the composition of the Lieutenant-Governor's Council which prevailed up to 1873, the council comprising two stipendiary magistrates as well as the commissioner of the NWMP who had the powers of a stipendiary magistrate. Legal qualifications for stipendiary magistrates were first required in 1880 by an amendment to the Northwest Territories Act.

The first provincial legislation relating to magistrates, enacted in 1906, provided for the appointment by the Lieutenant-Governor-in-Council of police magistrates having all the powers and authorities of two justices of the peace. An appointee was required to have practised law as a barrister

or solicitor for not less than three years. In the 1922 revision of the statutes The Magistrates and Justices Act eliminated the requirement of legal experience for police magistrates. The same provision was substantially carried forward in the 1942 revision of the statutes.

In the 1955 revision, the designation *police magistrate* was changed to *magistrate.*

In 1970, the designation *magistrate* was changed to *provincial judge* and The Magistrates and Justices Act was replaced by *The Provincial Judges and Justices Act.* In turn this Act was replaced by *The Provincial Court Act,* which created The Provincial Court of Alberta.

BIBLIOGRAPHY

The Early Administration of Justice in the North West, by The Hon. Horace Harvey, C.J.A., Alberta Law Quarterly 1934 Vol. 1, p. 1.

THE PROVINCIAL COURT

The Provincial Court exists by virtue of The Provincial Court Act which designates it as The Provincial Court of Alberta.

The jurisdiction exercised by the Provincial Court indicates the significant part it plays in the administration of justice. It is the court of first instance in all criminal matters. Of the 248,715 criminal charges laid in Alberta in 1973, 23,916 were for indictable offences. Of these latter offences more than 93 per cent were tried in the Provincial Court in the exercise of the absolute jurisdiction conferred by Section 483 of the Criminal Code, or under the jurisdiction conferred upon a Provincial Court judge by Section 484 of the Criminal Code to try, with the consent of the accused, certain types of indictable offences. All the remaining 224,799 charges involved summary conviction offences which are always tried in the Provincial Court.

During 1973, this workload was born by 51 Provincial Court judges. By December 31st, 1974, the number of Provincial Court judges had been increased to 56, not including family and juvenile court judges.

The Provincial Court obtains a broad jurisdiction from Sections 483 and 484 of the Criminal Code to try a great variety of offences. With the consent of the accused, the jurisdiction conferred by Section 484 is broad, reserving only the most serious offences to be tried by the Supreme Court of Alberta. A Provincial Court judge's power of sentence embraces life imprisonment.

In addition, the Provincial Court exercises jurisdiction in the enforcement of many federal statutes: among many others, The Juvenile Delinquent's Act, The Narcotic Control Act, The Food and Drugs Act, The Combines Investigation Act, The Bankruptcy Act and The Income Tax Act. The great variety of charges possible for summary offences under provincial statutes include alleged violations of The Highway Traffic Act, The Liquor Control Act and The Game Act, to name but a few. In addition, charges for violations of municipal bylaws are also tried in the Provincial Court. People obtain experience with the administration of justice as alleged offenders, witnesses or spectators. Because of this broad jurisdiction, the image of the administration of justice for a vast number of people is the image projected by the Provincial Court.

A brief submitted by the Civil Liberties Sub-Section of the Canadian Bar Association, Alberta Branch, urges this point in these words:

> *Because Provincial Judges Courts handle more cases per year than all other Alberta Courts combined it is obvious that the majority of our citizens are introduced to justice in these Courts. We submit that that introduction ought to leave impressions of calm, individualized, studied reasonableness, and not hurried, crowded, confusing arbitrariness. These Courts should be a showcase for justice.*

We agree it is imperative that the Provincial Court of Alberta be seen to administer the law in accordance with the highest traditions of systems of justice.

We also agree with the further contention in the same brief that the Provincial Court suffers from a lack of identity, a lack arising from *the rapid growth of the powers and duties of the Provincial Judge and his progression from the position of Police Magistrate without an expansion or re-assessment of the role of the Judge and those prerequisites needed by him to fulfill the expanded position.*

We have based our considerations of the terms of reference and the formulation of our recommendations on these two imperatives: the need for the Provincial Court of Alberta to project a model image of the administration of justice and the need for it to have a strong identity of its own.

Item 1 *WHAT SHOULD BE THE RESPECTIVE ROLES AND RELATIONSHIPS OF THE PROVINCIAL JUDGES, THE PROSECUTORS, THE CLERKS OF THE COURT, AND THE POLICE IN THE ADMINISTRATION OF JUSTICE IN THESE COURTS;*

The need for defining and clarifying the roles of those involved in the administration of justice in the Provincial Court was emphatically expressed in every part of the province where hearings were held.

The state of confusion that now prevails was forcefully put in a brief from the Alberta Provincial Judges' Association:

> *. . . there is a desperate need for change, one that will redefine and clarify the roles of each party, expand facilities and perhaps recognize truths that are obscured and unrealized.*
>
> *At the present time these respective roles and relationships are vague and ill-defined, in theory and in practice. I would pose to you, sirs, some rhetorical questions and I must admit that as judges we have had some diversity of opinion of the effectiveness of these questions, however, I shall pose them and I would say this to them, that we as judges are in no doubt as to what our position is, but in our dealings with the Bar, with the public, we find that there is confusion as to exactly what role we play. Therefore, I say, the judge is recognized as a judicial figure, but is he a provincial judge, a judge, a magistrate or a justice? Is he Your Worship, Your Honour, or just plain Mister? For we receive all of these titles. Of course, the Bar does accord a genuine respect for us, but there persists an attitude that the criminal courts of first instance are less than the most uplifting place to be. Further, is a Provincial Judge a public servant, a civil servant, an employee of the Attorney General? Is he an independent member of the judiciary or is he in fact part of the Department of the Attorney General, having in mind that he is subject to the Minister, that is, the Attorney General and is now subject to the Provincial Court Act, in dismissal, transfer and salary increases? Is the Provincial Judge independent from police authority notwithstanding that he is often termed a police magistrate, his court referred to as Police Court by the Bar, the public and the media, often his courtroom is in the police station and the police are evident everywhere, to swear informations, to act as*

orderlies, witnesses and even prosecutors? As well as the Judge, can the Crown Prosecutor maintain or seem to maintain his objectivity and control under like circumstances? These examples are not isolated nor are they given as specific criticisms of any particular body, but simply to illustrate the twin problems of the effort required by a Provincial Judge to establish and protect his proper place — that of a detached jurist, independent of all save the responsibility to properly apply the law and the need to have that fact seen, known and appreciated by all who are in his court.

A. PROVINCIAL COURT JUDGES

The role of the Provincial Court judges is to adjudicate. To perform this function properly, they must have complete detachment from the attorney general's department, the prosecutors, and the police. And if they are to be in control of their courtrooms, then they must not be burdened with administrative functions that might detract from the adjudication function.

It is a principle of natural justice that all persons are equal in the eyes of the law, a principle that would seem to imply that all persons convicted of a particular offence should be punished in the same way. It is, however, an equally important principle that every accused stands trial as an individual, and the context of circumstances may make that trial different from all that have preceded it. Although, for example, speeding may be a blanket offence, the circumstances that lead one man to speed to save a life may be quite different from the circumstances that lead another to speed to save time. Such conflicts in principles require that the Provincial Court judge be given time to think; time to study the law and related cases; and time to seek the advice of other judges.

Unfortunately, the workload of judges in Edmonton and Calgary leaves them no time to reflect, to study, or to confer. The docket for No. 1 courtroom in Edmonton on October 1st, 1973, illustrates this burden. On this one day, the presiding judge dealt with 188 matters involving adjournments, warrants, summonses, and arraignment of new cases. The average time per accused was approximately two minutes. In Calgary, on October 30th, 1973, the presiding judge had to deal with 180 such matters.

Day in and day out, this impossible burden weighs upon the judges whose only substantial relief is an annual vacation

of three weeks. Their evenings or weekends, or fortuitous gaps in the court dockets, provide the only time to work on judgments, to read pre-sentence reports, to keep up on current law reports, to study and to contemplate. Such a workload must not only impair the health and morale of the judges, but must adversely affect the performance of their duties to the detriment of the administration of justice in the Provincial Court.

Not only should the workloads of judges be brought within bounds, their numbers should be increased to the point where every judge will have one week in four free from court sittings and not less than one month's annual vacation. The appointment of additional judges is not, however, the complete answer to the congested dockets in Edmonton and Calgary. Elsewhere, this Report will deal with other aspects of this complex problem.

The problems confronting Provincial Court judges outside Edmonton and Calgary, particularly in small rural areas and small urban centres, are quite different. There, Provincial Court judges are expected to collect fines and court costs, to make reports to the attorney general's deparment, to mark exhibits and to provide for their custody, to operate recording machines and to take responsibility for a host of other administrative duties for which they may be ill-equipped.

If these Provincial Court judges are to perform the adjudication function satisfactorily, then they should be freed from performing administrative duties in or out of the courtroom.

RECOMMENDATIONS

1. The number of Provincial Court judges should be increased until each judge has one week in four free from court sittings, a week to be used to work on judgments, to read pre-sentence reports, to read current law reports, to study, and to contemplate.

2. Provincial Court judges should have at least four weeks annual vacation.

3. Provincial Court judges should be relieved of all administrative duties.

NOTE: Recommendations with respect to appointment and tenure, salaries, expense allowances and pensions will be found under Item 18.

B. PROSECUTORS

Although the Board of Review will continue to use the term *Crown prosecutor*, it feels that this term is misleading and should be replaced by *Crown counsel.* In the Provincial Court of Alberta, the Crown prosecutor is a representative of the Minister of Justice and of the Attorney General. He is also an officer of the court. In a joint submission, the Law Society of Alberta and the Canadian Bar Association, Alberta Branch, argue that this relationship with the court must be maintained:

> *. . . this relationship should have as its premise the independence of the Prosecutor from police influence. Consistent with the view that the Prosecutor is a Minister of Justice who does not strive for a conviction, the Membership would reinforce the absolute discretion conferred upon Crown Counsel, unfettered by police influence, in the determination of such matters as:*
>
> *(a) whether a charge should be proceeded with or withdrawn,*
>
> *(b) whether a particular punishment should be sought,*
>
> *(c) whether a trial ought to be conducted in a particular manner.*

They further emphasize that the adequate performance of prosecutors is dependent upon the quality of the individuals fulfilling these roles and the conditions under which they work. Since Crown prosecutors[1] are overworked and underpaid, able and competent counsel are discouraged from seeking appointments to these positions. The Board fully endorses the view expressed in this submission.

The legal community noted that prosecutors do not have the time to prepare for trials, to review cases properly, to assess the evidence or to interview witnesses. The Chief of Police for Edmonton stated that it was virtually impossible for the police to have any significant association with prosecutors because the prosecutors are so overburdened with work. The legal community stressed the necessity of Crown prosecutors' reviewing all charges. They revealed that, in Calgary and Edmonton, prosecutors often do not see charges until they are being tried in court. The result is that some

[1] On September 1st, 1974, 79 prosecutors were employed in the province, of whom 25 were part-time. There were 10 full-time prosecutors in Edmonton and 12 in Calgary. Additional appointments have been made since that date.

matters that should be attended to by Crown prosecutors devolve on police officers. These officers do not always have the legal knowledge required to determine the proper charges to be laid. In complex cases, they may not have the technical knowledge for the proper drafting of charges.

Because of the crucial nature of the role played by the Crown prosecutors in the Provincial Court, the Board recommends that the conditions of employment of Crown prosecutors should attract the best legal minds. Indeed, since one of their duties involves a pre-trial adjudication, their legal competence and judicial ability should be similar to those of a Provincial Court judge. Various steps could be taken to raise the status of the Crown prosecutor. For example, one of the marks of prestige in court is for senior counsel to have the status and privileges accorded Queen's Counsel. Senior Crown prosecutors should have this status and those privileges. The conditions of employment of prosecutors should be made so attractive that not only would the best graduates of our law schools, and the ablest counsel in private practice, seriously consider appointments as prosecutors, but in such numbers as to enable the attorney general to secure all prosecutors required. In addition, prosecutors should be given ample time to think, to study the files of each and every case brought to their attenion, to take part in programs of continuing legal education, and to engage in other activities that will maintain their competence.

In Edmonton and Calgary, prosecutors and defence counsel should have an adequate law library for their exclusive use. Elsewhere in the province, they should have access to such libraries. Every prosecutor should be provided with an adequate basic library for his or her own use. Generally speaking, this province fails to meet the library needs of its Crown prosecutors.

RECOMMENDATIONS

1. The designation of the agents of the Attorney General of the Provincial Court as *Crown Prosecutors* should be changed to *Crown Counsel.*

2. Crown prosecutors should prosecute all charges in the Provincial Court.

3. The number of Crown prosecutors, particularly in Calgary and Edmonton, should be increased substantially.

4. Specific prosecutors from Calgary and Edmonton should be designated to prosecute cases in rural areas adjacent

to these cities. In those areas, the police should be required to consult with these prosecutors with respect to the proper charges to be laid and the drafting of charges.

5. An adequate reference library should be provided in the Edmonton and Calgary Provincial Court houses for the use of Crown prosecutors and defence counsel.

6. Reference libraries in judicial centres outside Calgary and Edmonton should contain the law reports of decisions in all Canadian criminal cases.

7. Every Crown prosecutor should be provided with an adequate basic library for his or her own use.

8. Senior Crown prosecutors in Calgary and Edmonton, and the senior Crown prosecutor in each of the judicial districts, should be appointed Queen's Counsel.

C. POLICE

Almost every brief submitted to the Board of Review, including those submitted by the various police associations in Alberta, contained severe criticism of the role played by the police in the Provincial Court. The Board of Review believes that the police have these four important duties:

1. to prevent anti-social behaviour;
2. to investigate, within the framework of the law, all charges of anti-social behaviour;
3. to present, as witnesses in a trial, the facts found in their investigations;
4. to provide for the security of all members of society.

The Board also believes that the police should not be performing many of the extra tasks now required of them at various times and in various parts of the Province. They should not be required to act as:

1. court orderlies;
2. court clerks;
3. custodians of prisoners;
4. prisoner escorts;
5. prosecutors;
6. chauffeurs for judges and prosecutors; and
7. process-servers.

Nor should they be responsible for the issuing of search warrants and warrants for arrest.

The Board heard complaints in rural areas about police officers performing the role of prosecutor. We believe the role of the police is distinct from that of prosecutor and this distinction should be maintained both in appearance and in fact.

An unfortunate result of this misuse of the police is the appearance of their permeating the whole system of administering justice. It would seem, with justification, that they have too much opportunity to exert an undue influence on the way justice is administered. When police officers act as chauffeurs for judges and prosecutors, perform a multitude of administrative functions during a trial and eat meals with judges and prosecutors, there is little wonder that criticism is levelled at the system. In such circumstances, it is difficult to convince defendants that a conspiracy against them is not occurring and that justice ultimately will prevail.

Moreover, the extra and inappropriate duties imposed upon the police are time-consuming and sometimes unnecessarily costly. Some of these duties could be carried out by people with training that is quite different from that of a police officer.

What we consider to be the proper role of the police in relation to the courts was defined in the submission of the Calgary Police Service:

> *The responsibility of the police in the administration of justice involves a variety of duties. Insofar as the courts are concerned, the principle duty is to present the facts. However, with the passage of time, the involvement of the police officer in various ancillary functions of the Provincial Courts has grown to such an extent that it appears to some that the Courts are administered by and for the police, rather than the judiciary. The utilization of the police for functions and duties within the court system, apart from their primary capacity as witnesses, or for the purpose of maintaining order, has created an undesirable situation that, in our opinion, should be rectified for the good of the Courts, the police and those brought before the Courts.*
>
> *It is the opinion of the Calgary Police Service that the role of the police in the Provincial Courts should be reassessed so as to establish, in the minds of the public, the*

concept that the police are in court to present facts for consideration by the judiciary and are not directly a part of the court system. Further, alternatives should be considered leading to the eventual replacement of police in all duties relative to the admisistration of the Court by personnel responsible to the office of the Attorney General.

This definition of the proper role of the police in Provincial Court proceedings was also put forward in the submissions of the Royal Canadian Mounted Police and the Edmonton Police Force.

The police have important work to do: they should be allowed to do that work. Their role in the Provincial Court should be confined to appearing as witnesses, and providing security.

RECOMMENDATIONS

1. The police presence in the Provincial Court should be confined to giving evidence, and, when necessary, providing security.
2. Fraternization of police with Provincial Court judges in rural areas should be minimized.
3. Uniformed trained personnel, other than the police, should perform the duties of court and judges' orderlies.
4. Police should not be used as process-servers, except for the execution of warrants in serious criminal matters.

D. CLERK OF THE COURT

The clerk performs many of the administrative, clerical, and sometimes quasi-judicial duties that are necessary for the proper functioning of the court. In Edmonton and Calgary, these duties are performed by a large staff placed under the jurisdiction of the clerk of the Provincial Court. Elsewhere in the province, they are generally carried out by a clerk under the jurisdiction of a Provincial Court judge. In Calgary and Edmonton, the job of a clerk is necessarily more specialized than it is in smaller centres. Items 8, 13, and 18 deal with the role of the clerk, both in and out of the courtroom, and various problems relating to it.

E. RELATIONSHIPS AMONG THE PROVINCIAL JUDGES, THE PROSECUTORS AND THE POLICE

At the time of a trial, a Provincial Court judge, a prosecutor, and the police are brought together in a single courtroom,

and each performs the role described in the preceding section. Except for certain in-camera sessions, all trials are open to the public and the quality of justice in the courtroom is made visible to anyone who cares to see. Although the Board of Review will recommend certain changes in courtroom procedure, these are minor, and need not be discussed here.

Outside of the courtroom, anything that could be termed *fraternization* should be guarded against. Provincial Court judges, prosecutors, and the police must understand and respect the need for isolation from one another as essential to their place in the course of justice. A physical facility that does not afford, or does not seem to afford, separation and privacy for Provincial Court judges, prosecutors, and the police should be redesigned or replaced. Moreover, no element of design, however apparently trivial, should be exempt from the test of the need for isolation. If for example, as indeed in some places is the case, Provincial Court judges, prosecutors, and police are forced to use the same washroom facilities, then this breaks down the desired separation. The same is true if judges and prosecutors must share the same library.

Again, if persons coming up for trial must be housed in the same premises as the court, the police of necessity will be highly visible. If a police presence permeates a court house, the public may conclude that the police are the real power behind the courts. This appearance of police power may be false, but it is important to avoid that appearance. We strongly recommend that no court building in Alberta be used to house persons awaiting trial. The buildings housing the two functions may be adjacent, and even be connected by an underground tunnel, but they should not give the impression of being anything but independent buildings.

The relations between police and prosecutors is worthy of attention. Although the complete isolation of prosecutors from the police may not be compatible with their functions, they must be isolated from the appearance of improper influence. An arms-length meeting of a prosecutor and a police officer to clarify the circumstances and issues involved in a particular case may serve the interest of justice, but the same cannot be said of their enforced sharing of buildings and other facilities.

RECOMMENDATIONS

1. The practices, procedures, and physical facilities of the Provincial Court should facilitate the following relationships between the judges, the prosecutors and the police:

(a) segregation but not necessarily remoteness;

(b) respect but not awe;

(c) dignity but not arrogance; and

(d) the confidence of security but not the fear of oppression.

2. The court buildings should reflect simple functional elegance removed from arrogance and ostentation.

Item 3 *WHAT CHANGES, IF ANY, SHOULD BE MADE IN THE PRACTICE AND PROCEDURES USED IN OBTAINING SEARCH WARRANTS AND THE HANDLING OF THE MATERIAL SEIZED;*

The issuing of a warrant to search a premise involves a conflict between *the right of privacy* and *a need to know* on the part of the legal process. Although it would be easy to come down on the side of the angels and say that *the right of privacy* overshadows all other principles, the Board of Review does not see the matter as one of black and white. We consider that there are circumstances in which a society has a legitimate *need to know*, which must take primacy over *the right of privacy*. Since, however, the issue of a search warrant involves the resolution of the conflict between these two fundamental principles, it is imperative that people involved with seizure procedures strictly adhere to the provisions of the Criminal Code. Many members of the legal profession do not believe such adherence to be the case at all times.

Search warrants may be issued and enforced under such federal acts as The Narcotic Control Act, The Food and Drugs Act, The Excise Tax Act, and The Income Tax Act, and such provincial statutes as The Securities Act. The procedure for the issue and enforcement of search warrants is to be found in the Criminal Code: Section 443 as to the issue of the warrant; Section 444 as to its execution; Section 445 as to the seizure of things not specified in the warrant; Section 446 as to the detention of things seized; Section 446.1 as to the forfeiture of weapons; Section 447 as to the seizure of explosives. In addition, the principles governing the application of these provisions have been considered, interpreted, and applied in various Canadian decisions, some of which are cited below.[2]

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[2]Rex v. Container Materials Ltd. et al., (1941) 3 D.L.R. 145, 76 C.C.C. 18, (Ontario C.A.) affirmed (1942) S.C.R. 147, 77 C.C.C. 129, (1942) 1 D.L.R. 529.

Schumiatcher v. Attorney-General of Saskatchewan and Salterio (1960-61) 33 W.W.R. 132, 34 C.R. 152, 129 C.C.C. 267 (Saskatchewan Q.B.).

Regency Realties Inc. v. Loranger (1961) 36 C.R. 291 (Quebec S.C.).

Schumiatcher v. Attorney-General of Saskatchewan (1962) 39 W.W.R. 577, 39 C.R. 411, 133 C.C.C. 69, reversing (1962) 37 W.W.R. 495, 37 C.R. 268 (Saskatchewan C.A.).

Re Worrall (1965) 2 C.C.C. 1 (Ontario C.A.).

Bird Construction Co. Ltd., v. Attorney General for Alberta et al. (1966) 54 W.W.R. 93, (1966) 2 C.C.C. 137 (Alberta S.C.).

Re McAvoy (1970) 74 W.W.R. 688 (N.S.T.C.).

A recent and notable example of the complications surrounding the issuing and enforcement of search warrants involved the case of Dr. John David Craig, an Edmonton physician and surgeon.

It was alleged that Dr. Craig had defrauded the Alberta Health Care Insurance Commission. Three search warrants granted on January 17th, 1972, subsequently were quashed in Supreme Court. A fourth warrant was granted on February 28th, 1972, in connection with four charges of criminal negligence causing death. These charges arose from the deaths of four patients whom Dr. Craig had been treating with methadone for drug addiction.

A report commissioned by the Alberta Human Rights and Civil Liberties Association, following a private inquiry into proceedings involving Dr. Craig, claimed that the legal provisions governing search warrants had been violated in this case. On an application by way of certiorari, a justice of the Supreme Court ordered the return to Dr. Craig of all but three of the 304 files seized under the warrants, plus any copies made.

The Craig case is only one example of the complaints aired before the Board of possible abuses in the use of search warrants. Some of those complaints follow with recommendations for reform.

1. It is possible to lay an information for a search warrant before clerks or police officers who have been appointed justices of the peace. Since the granting of a search warrant is a judicial act requiring judicial competence, impartiality and independence, justices of the peace should not have the power to grant such warrants.

2. Police officers often prepare the information for a search warrant and then make the application for the granting of the warrant. Since the preparation of search warrants requires legal training, Crown prosecutors:

   (a) should be required to prepare the information for all search warrants;

   (b) should make all applications for the granting of search warrants.

3. Such alleged abuses as the following should be investigated and, if substantiated, should be corrected:

   (a) Affidavits presented by the police in support of applications for search warrants often have been insufficient to justify the granting of warrants;

(b) Sometimes verbal submissions, not made under oath by the informing police officer, have influenced a decision to grant a search warrant;

(c) Police officers who have been refused search warrants by one Provincial Court judge sometimes have applied to other Provincial Court judges for the same warrant. This shopping around was deplored. It was suggested that such a practice be forbidden.

As mentioned above, the solution to these problems might be to require that the application for a search warrant be made by a Crown prosecutor on behalf of the police. It then would be the responsibility of the Crown prosecutor to ensure that the requirements of the Criminal Code are met. Although ultimate authority to issue search warrants rests with a Provincial Court judge, Crown prosecutors should be expected to ensure that the information sworn in support of the warrant is correct and sufficient to justify the issuance of a warrant.

It was represented to the Board that the public did not have access to records concerning the information on which the issuance of a search warrant was based; or to the search warrant; or to the final disposition of the search warrant; or to the disposition of the goods that were seized.

The Board of Review itself experienced considerable frustration in obtaining a copy of one of the four search warrants issued in the cases involving Dr. Craig. Over two months of effort were required to locate a copy of the warrant and still more time passed before it was surrendered by the police force involved.

This inaccessibility of essential documents could be overcome by making the Provincial Court a Court of Record, where all such documents would be filed with the Clerk of the Court as is the practice of the District and Supreme Courts. These documents then would be available for public scrutiny. We will return to this important suggestion later in the Report.

Our legal system seems to be as lax in the control of property seized under warrant as it is in the issue of warrants. Section 443(1) of the Criminal Code directs that all property seized under a search warrant be returned to, and placed in the custody of, the Provincial Court judge who issued the warrant. As far as we could determine, this requirement is not usually fulfilled. Normally, the police retain the seized property on the grounds that Provincial Court judges lack storage facilities for cars, tractors, and other massive objects

that are sometimes seized. This argument is certainly irrelevant when papers, documents, and records are seized. More important it indicates a failure to understand the intent of this requirement of the Criminal Code. The actual storing or viewing of the seized goods by the judge who issued the warrants is of secondary importance. Of first importance is the control of the property. This control rests with the Provincial Court judge until a charge is laid. It then passes to the Clerk of the Court. Moreover, since, by virtue of Section 445 of the Criminal Code, a person executing a search warrant may seize things additional to those specified in the warrant, it is imperative that such things be brought to the attention of the judge who issued the warrant.

Section 446 of the Criminal Code sets out the procedure by means of which persons may inspect and examine those goods which are seized under a search warrant, but, persons whose property has been seized have stated to the Board that they had not been allowed to inspect their property before their trial.

The procedures recommended below should result in a more consistent adherence to the requirements of the law.

RECOMMENDATIONS

1. Informations for search warrants should be prepared by Crown prosecutors.
2. Applications for search warrants should be made by Crown prosecutors.
3. Search warrants should be issued by Provincial Court judges. Clerks of the court and police officers, acting in the capacity of justices of the peace, should not be allowed to issue search warrants.
4. In Edmonton and Calgary, applications for search warrants should be made to a Provincial Court judge who has been designated a chambers judge.
5. Applying to more than one judge for the same search warrant should be prohibited.
6. An information for a search warrant should contain a detailed and specific description of the property that is to be seized.
7. A copy of every information for a search warrant should be contained in the files maintained by the Clerk of the

Provincial Court, who should be required to record every subsequent step taken with respect to the information.

8. The files mentioned in (7) should be accessible to all persons on the same basis as are the files of the superior courts.

9. After making the seizure, the police officer should report to the Provincial Court judge who issued the search warrant in order to allow the Provincial Court judge to give directions about the detention of the seized property, the right of access to it, and the conditions of such access.

10. There should be uniformity of practice in the issuing of search warrants.

11. A detailed study should be made by the Institute of Law Research and Reform to determine whether the provisions of the Criminal Code with respect to search warrants should be changed. Some questions to which the Institute might address itself are the following:

    (a) Should seized documents be sealed for a specific period of time following their seizure to permit an application to a superior court to quash the search warrant?

    (b) Should the person from whom documents have been seized have an automatic right of examination of those documents? (At present, a court order must be obtained before such documents become open for examination.)

    (c) If a search warrant is quashed by a judge of a higher court, should it be mandatory that original documents, and all copies of such documents, be returned to the person from whom they were seized?

Item 6 *WHETHER JUDGES SHOULD RECEIVE SOME INITIAL AND CONTINUING TRAINING IN THEIR DUTIES;*

The members of both the bar and the bench are of the opinion that a Provincial Court judge should on appointment:

(a) have a degree in law from a recognized university;

(b) have extensive recent trial experience; and

(c) enjoy the respect of the bar and the bench.

Although there are 15 Provincial Court judges (Criminal Division) in Alberta without legal training, it is now established policy to appoint only persons with such training.

There appears, however, to be little support for the suggestion that Provincial Court judges should take additional training before assuming their appointment.

Nevertheless, the province should not appoint Provincial Court judges today and require them to preside tomorrow. New appointees should be allowed about two months to confer with established judges on the rationale of particular decisions, to read the extensive literature on the administration of courts, to study the philosophy and art of sentencing, to become familiar with modern legal technology and to familiarize themselves with the routine duties a Provincial Court judge must perform.

Continuing legal education can only be achieved by Provincial Court judges by day-to-day study. They ought to be given the time to read the voluminous reports of legal cases and the publications of those groups which are striving to determine changes that should be incorporated into the legal process: the Law Reform Commission of Canada, the Ontario Law Reform Commission, Alberta's Institute of Law Research and Reform, sections of the Canadian and Provincial Bar Associations, the faculties of law of the universities of Canada, and numerous other organizations and agencies which are generating ideas about the direction the law should take.

Conferences and seminars that bring together Provincial Court judges from this and other jurisdictions have their importance, but they are too brief and sporadic to be more than of limited educational value. Judges can and must keep up their level of competence on a day-to-day basis. They will do so if continuing legal education is considered to be part of their duties, and if they are given the time to devote to it.

Unfortunately, there does not appear to be a government policy about providing personal libraries for Provincial Court judges. Some judges are provided with Martin's, Tremear's, or Crankshaw's Criminal Code; some are not. Some are provided with a legal dictionary; some are not. Some are provided with a text on evidence; some are not. Some are provided with ready access to current law publications; some are not.

In this age of change, the need for Provincial Court judges to prepare themselves to deal with a multitude of complex legal problems is critical. These problems may range from legal problems involving pollution to the constitutional and civil rights of native people. They involve the adjudication of some of the more sophisticated forms of crime which require a legal knowledge that goes far beyond the basic principles of criminal law. No matter how competent Provincial Court judges may be, it is impossible for them to have at their finger tips all of the legal knowledge they now must use. Under such circumstances, it has become imperative that all Provincial Court judges have a basic personal legal library and ready access to a comprehensive law library.

It should be emphasized that the problem of inadequate libraries is particularly acute in rural areas. It is urgent that special attention be given to the library requirements of Provincial Court judges in rural and remote areas of the Province.

Although the value of sabbatical study has been recognized by universities for hundreds of years, the adoption of such a policy outside of universities is of recent vintage. By funds supplied by the Donner Foundation and the department of the attorney general, several Provincial Court judges have been freed from judicial duties to study, to write, to lecture, and to do legal research. All of the Provincial Court judges who have been given a year's leave of absence of this type have written glowingly about the opportunity that was given to them. The Board of Review recommends that such a policy be extended to include all Provincial Court judges and all Crown prosecutors.

RECOMMENDATIONS

1. Following their appointment, Provincial Court judges should be allowed two months for study, preparation, and observation of Provincial Court proceedings before being called upon to preside.

2. Provincial Court judges should not be required to preside for more than three weeks out of every four.

3. Provincial Court judges should be given a leave of absence with pay one year out of every seven, to be spent in studying, writing, and doing legal research. This year should be spent at a university or other approved institution.

4. Provincial Court judges should participate in a reasonable number of legal conferences and seminars. Time and financial support should be provided for such activities.

5. All Provincial Court judges should be provided with a basic legal library for their personal use and should have ready access to an adequate law library.

6. The contents of the basic library provided Provincial Court judges should be determined by representatives of the attorney general's department and The Provincial Judges' Association. Procedures should be provided to keep the basic library current.

Item 7 *WHETHER IT WOULD BE DESIRABLE TO APPOINT A CHIEF PROVINCIAL COURT JUDGE OR SENIOR JUDGES AND IF SO, WHAT SHOULD BE THEIR DUTIES;*

The Board of Review found widespread support for the proposal that the province create the position of Chief Judge of the Provincial Court. A canvas of active practicing members of the Law Society of Alberta by that society and the Canadian Bar Association, Alberta Branch, produced a majority of favourable responses. The proposal is also supported by the Provincial Court judges and Crown prosecutors.

Because of its historical development, the Provincial Court has come to be regarded as an arm of the attorney general's department, the Provincial Court judges as little more than departmental employees.

The complete separation of the court from the department should correspond with the separation of the executive and judicial powers, a fundamental principle in democratic government. The independence of the judiciary not only must be a reality but must be seen to be so. This can only be attained by the Provincial Court becoming a unified entity. It must have an identity that reflects the important part the Provincial Court should play in the administration of justice. We believe that a Chief Judge of the Provincial Court will help provide this identity.

The following summary of the projected duties and functions of the Chief Judge of the Provincial Court is taken from the submission of the Law Society of Alberta and the Canadian Bar Association, Alberta Branch:

(a) *Liaison — a Chief Judge would be an effective liaison between the Provincial Judges' Court and the Attorney General's Department of the Province, Department of Justice, the Police Authorities, Probation, Parole and Correction Authorities; Legislative and Parliamentary Authorities;*

(b) *Coordination of Courts in the urban areas, e.g. arranging for replacement Judges during holidays, sick leave, etc.;*

(c) *To coordinate meetings and discussions among judges of the Provincial Court with a view toward achieving uniformity with respect to such matters as jurisdiction, practice and procedure.*

The Chief Judge of the Provincial Court should also:

(a) familiarize new judges with their duties;

(b) arrange frequent meetings of Provincial Court judges to discuss matters of common concern;

(c) arrange seminars as part of a continuing education program for Provincial Court judges;

(d) investigate some complaints about the conduct of the other Provincial Court judges; and

(e) deal with complaints of an administrative nature.

It was predictable that the Board of Review would hear concern about inconsistency in sentencing. The brief of the City of Edmonton voices concern thus:

> *The Chief Provincial Judge should also attempt to ensure that comparable offences receive substantially comparable sentences. This would ensure reasonably consistent and compatible sentences and could discourage defence lawyers from attempting to arrange adjudications before particular judges.*

Historically, the problem of inconsistency in sentencing is a vexing one for which the appointment of a Chief Judge of the Provincial Court cannot be expected to provide an instant solution. The Appellate Division of the Supreme Court of Alberta does not normally substitute its judgment for that of the trial judge, but it does correct wide disparity in sentencing in some cases, reducing sentences that are manifestly too severe, and increasing sentences that are manifestly too light. It also attempts to provide sentencing guidelines which reflect the changing attitudes of society. However, since few appeals from sentences imposed for summary offences reach the Appellate Court, few guidelines exist for sentencing in such cases.

It is our view that a Chief Judge of the Provincial Court, through informal discussions and group seminars, could help to eliminate wide disparities in the penalties imposed by the Provincial Court. The problem, however, is far too complex to admit of a simplistic solution. Indeed, the independence of the judiciary, and specifically the independence of individual judges, is threatened by many of the proposals being advanced to solve this vexing problem.

In judicial centres in which there are two or more judges, one should be designated as senior judge, who would be ex-

pected to make court assignments, to arrange replacements for judges when necessary and to co-ordinate administrative arrangements of a local nature.

RECOMMENDATIONS

1. Provision should be made for creation of the position of Chief Judge of the Provincial Court.

2. The powers and duties of the Chief Judge should be set out in the necessary legislation.

3. These powers and duties should provide that the Chief Judge should:

   (a) normally be the means of liaison between the Provincial Court and the following agencies of government:

      (1) the attorney general's department;

      (2) the department of justice;

      (3) the police authorities;

      (4) probation, parole and correction authorities;

      (5) legislative and parliamentary authorities;

   (b) co-ordinate the operation of the courts by arranging the sittings of the court;

   (c) arrange for the exchange of court sittings between judges;

   (d) arrange for the replacement of judges when necessary;

   (e) retain some judicial duties;

   (f) organize and conduct seminars for groups of judges, and provide for the continuing education of Provincial Court judges;

   (g) familiarize newly-appointed judges with their duties;

   (h) be consulted in the appointment of new judges for the Provincial Court;

   (i) investigate some complaints about the conduct of the other judges of the Provincial Court, and have the power to deal with complaints of a minor nature;

   (j) have the power to suspend Provincial Court judges from their duties for a limited period of time.

4. The Chief Judge should be provided with a staff that would assist in carrying out administrative responsibilities.

5. The Chief Judge should be paid a salary that is higher than the salary paid any other Provincial Court judge.

6. The Chief Judge should be provided with a fund to finance a program of continuing education for the Provincial Court judges.

7. In judicial centres having two or more judges, one judge should be designated as senior judge, with duties as set out in the necessary legislation. These duties should pertain to the routine distribution of workload among the other Provincial Court judges in these centres, and to other matters of a local nature. Senior judges naturally would be subordinate to the Chief Judge of the Provincial Court.

Item 8 *WHETHER ANY CHANGES SHOULD BE MADE IN THE SYSTEM OF ESTABLISHING OR OPERATING CIRCUIT COURTS;*

Judges

Some Provincial Court judges residing in Edmonton and Calgary go on circuit to smaller centres in areas adjacent to these two cities. In addition, there are also 21 Provincial Court judges, resident in other cities and towns, who go on circuit to serve smaller centres in adjacent areas. It is quite evident to the Board that these 21 Provincial Court judges play an important and valued role in the communities in which they live. Any proposal to remove such judges from those communities would meet with resistence.

Circuit judges are generally accompanied by a clerk, and on occasion by a court reporter, but they rarely have the services of a prosecutor. That role is often performed by an RCMP officer.

In the large urban centres of Edmonton and Calgary, the major problem facing Provincial Court judges is the serious overload of trial work that is imposed upon them. In smaller and outlying areas, the major problem is quite different. Here, Provincial Court judges have imposed upon them many extraneous administrative duties. They are expected to:

1. collect fines and court costs;
2. make returns to the attorney general's department;
3. mark and care for exhibits;
4. operate tape recording machines; and
5. attend to all correspondence relating to accounting procedures.

The Board of Review believes that the imposition of these extraneous tasks adversely affects the performance of the judicial function and recommends that Provincial Court judges be relieved of such administrative duties.

Clerks

A clerk in a rural Provincial Court is usually classified as Clerk-Stenographer I-II. A position classification description for a Provincial Court clerk at Fort McMurray, dated May 5th, 1970, indicates the wide range of duties and responsibilities

required of people who hold this position. One person is expected to perform all of the functions listed below.

Clerk — Magistrate's Court

Prepare all documents for Court as filed by enforcement agencies, i.e. R.C.M. Police, Game Branch, Forestry, National Parks, etc.
Accept all fines and issue receipts.
Prepare documents arising from court such as warrants, Probation Order, Recognizance, etc.
Account for all monies collected and deposited in trust account.
Complete coded returns and record each day's proceedings.
Deal with Police in problems arising from dockets. Prepare all cheques in payment of returns, restitution, etc. File and record all documents.

Clerk — Voluntary Penalties — (Summary Convictions Act)

Deal with public in accepting payments out of Court.
Account for all monies received and deposited in trust account.
Prepare daily coded returns and cheques to the Department.
File and record all related documents.

Clerk — Small Claims Court.

Assist plaintiffs in preparing claims and file all claims.
Prepare summons and arrange for service either by registered mail, bailiff or plaintiff.
Accept counter claims and notify plaintiff.
Prepare Judgments and mail to plaintiff and defendant.
Prepare all monthly returns in connection with Small Claims Court.
Prepare documents for Complaints in Master and Servants Act, Labour Act, etc.

Clerk — Juvenile Court

Prepare all documents arising from complaints or on request of Police.
Notify Probation Branch of court proceedings.
Arrange Court schedule as required with documents and files.

Clerk — Family Court

Interview and prepare Affidavits in application for maintenance in Domestic Relations Act and Family Court Act.
Prepare all orders and documents issued from the Court.

Collect, account for and deposit in separate trust funds all monies paid into the Family Court.
Maintain suitable ledger and records and draw cheques to recipients of Maintenance Orders.
Supervise filing and recording of all documents.

This job description is typical for Provincial Court clerks in rural areas.

On September 1st, 1974, the salary scale for clerks was $484.00 - $667.00, a scale which cannot be considered commensurate with the responsibilities which the position carries with it. Nor is it competitive with the corresponding salaries in private business, or in other parts of the Civil Service. It compares unfavourably with salaries offered in British Columbia or Ontario for similar positions. A Public Service Commission notice in British Columbia, dated September 18th, 1974, invited applications for the position of Court Clerk II, a salary range of $754.00 - $899.00. The lowest classification for Court Clerks in Ontario has a monthly salary range of $784.00 - $917.00.

Moreover, in view of the wide range of duties and responsibilities of a clerk who accompanies a Provincial Court judge on circuit, or who performs corresponding duties in centres where there is not a Clerk of the Provincial Court, the Board considers that the position should have a special job designation. We suggest the title *Judicial Secretary*. We recommend that a diploma program for the training of judicial secretaries be established at some of the post-secondary educational institutions in Alberta. Since one of the duties of a judicial secretary should be the operation and monitoring of tape recording machines, instruction in the operation of such machines should be part of the program. A diploma in this program should be a requirement for an appointment to this position.

The salary scale for the position of judicial secretary should be commensurate with the duties and responsibilities of the position. The salaries should be high enough to attract and hold competent people. They should also be competitive with corresponding salaries in private business, in other branches of the Civil Service and in Crown agencies.

Transcript of Proceedings

There is a shortage of court reporters, a shortage that is particularly acute in rural courts. When there is no court reporter, the presiding judge usually is required to operate a

portable tape recording machine. This creates problems. It is a distraction to the judge to ensure that the machine is operating properly. He or she must turn it on or off as required and replace tapes that have run out.

A report submitted by the Chief Court Reporter, Edmonton, to the Inspector of Legal Offices dated September 21st, 1973, quotes from an interview with an employee of the Edmonton Provincial Judges Court Reporters Office to the effect that high-quality tape recordings of the proceedings of the courts were sometimes impossible to obtain. A variety of reasons was offered: the faulty operation of the recording machinery; the improper placement of the recording machine; poor acoustics; extraneous noises; and simultaneous speaking by a number of persons. Moreover it was sometimes impossible to identify the speaker, or to understand the technical terms used by witnesses. The employee stated that, on the average, out of 20 recordings two were bad, eight were fair, and 10 were good.

The transcripts of evidence taken from these tapes are often of supreme importance to an accused person who appeals a conviction. Since they are the only record available to the Court of Appeal, an unsatisfactory transcript of evidence is highly prejudicial to the rights of the accused, and might necessitate a re-trial.

In rural areas, there is also a shortage of court reporters to record preliminary inquiries of indictable offences. In such inquiries, a transcript of evidence is indispensable. A Provincial Court judge stated that the unavailability of court reporters for preliminary inquiries is *one of the biggest headaches we have, and causes more delays than anything else in our system.* He pointed out that sometimes an accused who has been refused bail may have to remain in custody for as long as two months because of the unavailability of a court reporter for the preliminary inquiry. This is an unjustifiable infringement on the rights of an individual.

The Board of Review has concluded that, in time, tape recording machines will replace court reporters in rural courts, both in preliminary inquiries and in trials. It is accordingly important that the best electronic equipment be provided and that the judicial secretary be trained in its operation and monitoring. We suggest the use of two different types of recording equipment. The best procurable portable units should be used on circuit and multiple track recording machines should be installed in government-owned courtrooms.

Until such time as this equipment is available, and judicial secretaries have been trained to operate it, the number of court reporters available in rural areas for preliminary inquiries and for trials should be increased.

Prosecutors

Elimination of the use of the police as prosecutors has been recommended elsewhere in this Report. If there is to be equal justice for all, an accused person in a rural or remote area should be entitled to have the judicial process carried out in the same way that it is in urban centres. All charges tried in rural provincial courts should be prosecuted by Crown prosecutors.

Orderlies

The undesirability of the current practice of using police as court orderlies has been mentioned elsewhere in this Report (pages 12 to 14) and no further comment is necessary here.

The Circuit Court

A circuit court should have a judge, a Crown prosecutor, a judicial secretary, and, when necessary, a court orderly. The Board of Review would like to see such people provided for every circuit court in Alberta.

RECOMMENDATIONS

1. The practice of having Provincial Court judges live in smaller centres should be continued.
2. Judges should continue to go on circuit to the smaller centres in the areas adjacent to their places of residence.
3. Judges on circuit should be relieved of all administrative duties.
4. The position of Clerk should be reclassified and renamed *Judicial Secretary.*
5. A diploma program of studies for judicial secretaries should be established in some of the post-secondary educational institutions in Alberta. This program should include training in the operation and monitoring of tape recording machines.
6. A diploma in this program should be one of the requirements for an appointment as judicial secretary.

7. Every judge on circuit should be provided with a judicial secretary.

8. The salary scale for judicial secretaries should be commensurate with their duties and responsibilities. Their salaries should be competitive with corresponding salaries in private business, in other branches of the Civil Service, and in Crown agencies.

9. One of the duties of the judicial secretaries should be the operation and monitoring of tape recording machines.

10. Tape recording machines with multiple tracks should be permanently installed in all government-owned Provincial courtrooms.

11. Every judicial secretary should be provided with the best procurable portable tape recording machine for use on circuit in places where permanently installed recording machines are not available.

12. As an interim measure, the Provincial Court should have enough court reporters to provide prompt recording services for all preliminary inquiries and trials of indictable offences.

13. Besides a judge, a circuit court should have a Crown prosecutor, a judicial secretary, and, when necessary, a court orderly.

Item 9 *WHETHER THE PROVINCIAL COURT JUDGES PRESENTLY PRESIDING IN THE PROVINCIAL COURTS OF EDMONTON AND CALGARY SHOULD TRAVEL ON CIRCUIT AND WHETHER THE PROVINCIAL COURT JUDGES PRESIDING IN RURAL AREAS SHOULD FROM TIME TO TIME SIT IN THE PROVINCIAL COURTS IN URBAN CENTRES;*

If it is accepted

(a) that the standard of justice should be the same in every courtroom in Alberta; and

(b) that the Provincial Court judges should be prepared, on assignment by the Chief Judge of the Provincial Court, to preside in any courtroom anywhere in Alberta,

there would be advantages in having the judges in Edmonton and Calgary travel on circuit, and the judges in rural areas sit from time to time in the major centres.

Although our Report has stressed the importance of insulating Provincial Court judges from certain kinds of prejudicial influence, it is not our intent to advocate that they lead a ghetto-like existence. Quite the opposite. There should be a determined effort to make them aware that they are all part of one court system. They should know the people and the facilities that belong to other parts of that system.

At present, four judges who live in Edmonton and one who lives in Calgary go on circuit to centres in adjacent rural areas, as do judges resident in other cities, or in smaller rural centres.

There is widespread support on the part of both judges and members of the Bar for a periodic interchange of judges, provided this does not lead to the permanent replacement of judges who live in smaller centres by judges who live in the larger cities, and who preside in circuit courts.

We believe that such an interchange would make judges aware of problems in the administration of justice that vary from region to region. It should make them aware that it is desirable to have one system of courts with a common goal, not a multitude of courts with different goals. It should result in greater uniformity and effectiveness of practice. For example, one city judge, who exchanged sittings with a rural

judge, suggested an administrative change that improved the efficiency of that rural court. Interchange of judges between the major centres should also take place. For instance, Edmonton judges should sit in Calgary courtrooms, and vice versa. It has been claimed that the application of justice differs in Calgary and Edmonton. Indeed, there appears to exist a definite ideological difference that should be removed by discussion and debate. For example, Edmonton and Calgary judges differ in their use of absolute and conditional discharges. Such differences might disappear if a mechanism for the regular interchange of judges was provided.

RECOMMENDATIONS

1. Judges resident in smaller centres should exchange court sittings, for short periods, with judges who preside in Edmonton, Calgary, and other cities in the province.
2. The policy of having judges reside in smaller urban and rural areas of the province should be continued.
3. Judges resident in Edmonton who go on circuit should exchange court sittings, for short periods, with the judges who preside in Edmonton. The same policy should pertain to Calgary, and the other cities of the province.
4. Judges who preside in Edmonton should exchange court sittings, for short periods, with judges who preside in Calgary.
5. The Chief Judge of the Provincial Court should be responsible for the exchange of court sittings for all Provincial Court judges.

Item 13 *WHETHER ANY CHANGES SHOULD BE MADE IN THE PROCEDURES FOLLOWED BY THE CLERKS OF PROVINCIAL COURTS IN THE PERFORMANCE OF THEIR ADMINISTRATIVE DUTIES.*

The Board of Review is recommending a drastic reorganization of court administrative procedures. These recommendations apply to general administrative procedures and also to particular administrative procedures used in court. Items 8 and 18 contain detailed accounts of these recommendations.

Item 14 *WHETHER PRESENT FACILITIES IN REMOTE AREAS PROVIDE SATISFACTORY JUDICIAL SERVICES*

Shortcomings in the judicial services provided in remote areas which were drawn to the Board's attention are listed below.

1. A legally-trained Crown prosecutor is sometimes not provided. This function is sometimes performed by an RCMP officer.
2. Legal aid is inadequate.
3. Some of the functions that should be performed by a Provincial Court judge are now being performed by a justice of the peace.
4. In many instances, a court reporter is not available.
5. When a court reporter is not available, the substitute mechanical or electronic recording equipment lacks the quality to ensure that an accurate record of the proceedings is obtained.
6. Generally, there is insufficient qualified staff to carry out adequately all the necessary judicial services.
7. A desirable isolation of Provincial Court judges, Crown prosecutors, and the police from one another is seldom achieved.
8. Physical facilities are inadequate.

Under this item, the Board of Review will discuss the inadequate physical facilities that exist in rural areas. We shall deal with other inadequacies elsewhere in this Report.

The Board of Review reiterates that the level of justice must be, and must be seen to be, the same in every provincial courtroom in Alberta. This requires that the province provide a minimum standard of physical facilities. Not to do so would be to imply that this province looks upon the difference between the levels of justice provided in the larger urban areas and the smaller rural or remote areas as unavoidable or inconsequential.

The physical facility in which the Provincial Court conducts its sittings has a significant bearing on the proper functioning of the court. It also has a significant bearing on the image that the administration of justice conveys to the public.

We suggest that a courtroom should embody the following three essential characteristics:

(1) it should be dignified;

(2) it should be functional; and

(3) it should ensure security.

Although there are good courtrooms and good court houses in rural areas, there are many that are inadequate for the proper administration of justice. In some of the smaller centres, Provincial Court sittings are conducted in public halls in which the acoustics, lighting, heating, and washroom facilities are inadequate. The judge rarely has a retiring room in which to robe or in which to rest during an adjournment. There are seldom rooms available in which Crown prosecutors or defence counsel can interview witnesses, or to accommodate witnesses waiting to be called to give evidence. Security is inadequate.

At the request of the Board of Review, bar associations in the various judicial centres made a survey of court facilities used by the Provincial Court in the adjacent rural areas. The survey covered 109 courtrooms, of which 31 are government-owned. The rest are rented. A few excerpts from these reports will illustrate the type of facilities provided for Provincial Court sittings at some places in Alberta.

Taber

The Court is held in the old town office. The courtroom is adequate. The one washroom facility is reserved for the use of the judge.

Coaldale

The Court is held in the basement of the town office. There are no washroom facilities.

Nanton

The Court is held in a building which has only one washroom. This washroom is used by the judge, counsel, accused persons, witnesses, and the general public.

Spirit River

The Court is held in a church hall. The only other space available is a kitchen which is used by all of the people involved in the court proceedings.

Valleyview

The Court is held in a room under a roof that leaks. While the court is in session in wet weather, a garbage pail is used to collect the dripping water.

Beaverlodge

The Court is held upstairs in the community hall. Everyone entering or leaving the Court must walk in front of the judge's bench. No other facilities are provided.

Vauxhall

The Court is held above the fire hall. A peaked roof makes it impossible for a tall person to stand upright except in the centre of the room. It has accommodation for only 10 persons. Washroom facilities are not provided.

Waterton

The Court is held in the main reception room of the RCMP detachment office. The room is approximately 20 by 15 feet in size.

Picture Butte

The Court is held in a former library. The only private area available to the judge is behind a curtain. The washroom facilities were built to accommodate small children.

Airdrie

The Court is held in an upstairs room in a community hall. The only access to this room is by way of a steep and narrow stairway. The judge's bench is a table. Witnesses and the public are seated on an ancient chesterfield. Heating in the winter months is inadequate. There are no washroom facilities.

Okotoks

The Court is held in a former store. There is an adjoining premise from which voices and the sound of a typewriter can be heard. The enclosure is not large enough to accommodate adequately the judge, counsel, reporter, accused and witnesses.

On the basis of its investigation, the Board of Review recommends the adoption of a basic plan for court facilities in rural areas. Such a plan should take cognizance of the following points.

1. The courtroom should be dignified, but not pretentious.
2. Although the courtroom need not be large, there should be sufficient space in the enclosure for the use of the staff and the officers of the court.
3. Acoustics and lighting should be good.
4. The courtroom should be designed with adequate security in mind.
5. There should be a retiring room, with private washroom for the judge. There should be direct access from the retiring room to the enclosure.
6. There should be a room in which witnesses can wait until they are required to give evidence.
7. There should be a room in which counsel can interview witnesses.
8. Washrooms for the use of witnesses and public should be adequate and convenient.
9. A room with washroom facilities, should be provided for counsel.

We found the court facilities at Slave Lake, to a large extent, met these requirements.

RECOMMENDATIONS

1. A basic plan should be established for Provincial Court facilities in non-metropolitan areas.
2. This plan should provide:
   (1) a courtroom, moderate in size, of simple dignity, having good acoustics and adequate lighting;
   (2) an enclosure with sufficient space for the judge, dais, clerk, court reporter, counsel, witnesses, accused persons, orderly, and the police when their presence is necessary for security;
   (3) a judge's retiring room with a private washroom;
   (4) direct access from the judge's retiring room to the enclosure;
   (5) a room for counsel, with private washroom;
   (6) a room for witnesses;
   (7) a room for counsel to interview witnesses;
   (8) adequate and convenient washroom facilities for witnesses and the public.

Under Item 18 we shall discuss the court facilities in Edmonton and Calgary.

Item 15 *WHETHER THE PRESENT SYSTEM OF ISSUING WARRANTS OF COMMITTAL AGAINST PERSONS WHO DEFAULT IN PAYMENT OF FINES FOR PROVINCIAL OFFENCES IS DESIRABLE OR NECESSARY AND IF SO, WHETHER ANY CHANGES SHOULD BE MADE IN THE PROCESSING OR ENFORCEMENT OF SUCH WARRANTS;*

The Board of Review is unequivocal in its recommendation that there should be a major change in the whole concept of issuing warrants of committal to those who default in payment of fines for provincial offences.

For provincial offences, sentences of the form of X dollars as a fine, or, upon default, Y days in jail, should be abandoned whenever possible. Although the Board has not traced the history of this form of sentencing, it seems likely that it stems from the concepts that led to the creation of debtors' prisons. This form of sentencing is a serious act of discrimination against the poor and disadvantaged people of this province. It is a source of the seriously skewed statistics showing an over-representation of native people being held in the provincial jails.

To keep a person imprisoned for 90 days will cost society somewhere between $1,000 and $3,000, a large sum of money that should be invested only to accomplish some constructive purpose. We seriously doubt that any purpose is served by imprisoning people for being unable to pay a fine.

Even under summary convictions it is possible for people to receive a fine as much as $500. The probability is small that people who earn enough to live but little more have, or ever will have, the money with which to pay such a fine. For these people, the alternative is an illusion. They are actually being sentenced to a term of imprisonment. People in the middle, or upper, income groups normally will be able to pay a fine. They rarely will choose to go to jail. When we confine our discussion to persons convicted of a particular offence, the choice of a fine or imprisonment amounts to an act of discrimination against those who cannot pay the fine.

It is our contention that there are imaginative and innovative ways by means of which a municipal or provincial government can enforce compliance with bylaws or statutes. To paraphrase a song from Gilbert and Sullivan's *Mikado, Let the punishment fit the crime.* For example, impounding a car, pending payment of fines levied under acts controlling the use

of cars, can produce astonishing results. We learned of an interesting experiment being tried in northern Saskatchewan. The scheme known as *The Fine Option Program* permits a person who cannot afford to pay a fine to choose to work at community projects of a public service or charitable nature. This appears to be an imaginative and constructive alternative to imprisonment that merits study.

The Law Reform Commission of Canada comments on the effect of a fine or days in default sentence as not only discrimination but as subversion of the intent of the law:

> *The effect of the fine or days in default sentence is that approximately 50% of admissions to provincial and local correctional institutions in certain parts of Canada in recent years have been for default in payment of fines. A considerable amount of money is therefore being spent to imprison offenders who are not meant to be imprisoned in the first place. It is recognized that most of these people are imprisoned for non-payment of fines resulting from violations of provincial statutes, primarily liquor offences. However, studies indicate sufficient use of imprisonment as an alternative to a fine in Criminal Code offences for such practice to warrant concern at a federal level as well. While some of those being imprisoned are people who choose to spend a short term in jail although they could afford to pay their fines, many seem to be people who simply cannot afford the fine owing to financial circumstances, or who are unable to organize their incomes so that they could manage to pay. In one study 40% of people imprisoned for not paying fines made partial payment either before or while in custody. This figure demonstrates a willingness but inability on the part of these people, to pay the full amount of the fine which also may have been the case for some of those imprisoned who made no payment at all. Furthermore, several studies indicate that the types of offences for which persons are imprisoned for non-payment of fines are typically poor people's offences, such as vagrancy and drunkenness. In other words, the alternative jail term seems to fall discriminatorily on the poor offender. The discriminatory effect of the alternative jail term has been found in several provinces to weigh most heavily on the relatively poorer Indian population. In 1970-71, in Saskatchewan correctional centres, 48.2% of admissions were for non-payment of fines. However 57.4% of native admis-*

sions were for default of fines as compared to 34.7% of non-native admissions.

Besides the discriminatory effect and cost of the days in default sentence, we believe that the whole system of criminal justice becomes suspect when the fine is seen not as a sanction but as a means of purchasing liberty.[3]

Because of this discriminatory effect, the Civil Liberties Sub-Section of the Canadian Bar Association, Alberta Branch, expressed the view in its submission to the Board that the imposition of a sentence of imprisonment on default of payment of a fine may be contrary to the Canadian Bill of Rights.

The Law Reform Commission of Canada has adopted the basic principles enunciated in the New Zealand Fines Enforcement Committee's Report and makes the following recommendations:

(1) That, as the court, in imposing a fine, must have considered this to be the appropriate penalty for the offence, every effort should be made to collect the fine before resorting to imprisonment or other forms of detention.

(2) The final sanction of imprisonment should not be resorted to unless:

(a) all other methods of enforcement have been unsuccessfully attempted or were unavailable or inappropriate; and

(b) the defendant has the means or ability to pay.

The Board concurs with these principles.

One alternative suggested to the Board in lieu of imprisonment for unpaid fines involves the creation of a separate collection agency to which all unpaid fines would be assigned. This agency would be empowered to use any civil remedy available to enforce payment. It might, for example, use garnishees or writs of execution. The work awaiting such an agency is apparent in data such as the following. In 1973, a total of $7,917,810 in fines was assessed in the Provincial Court. Of this amount, $495,045 resulted in jail terms in default of payment. In addition, data supplied by the Fort Saskatchewan Correctional Institute for the month of November, 1974, showed that 185 people were admitted and that

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[3] Working Paper No. 6, page 32.

they had committed a total of 292 offences. Of these, 157 offences involved people who were serving sentences for default in payment of fines. The breakdown of these 157 offences follows.

	Number	*Percent*
Highway Traffic Act offences	61	38.9
Liquor Control Act offences	19	12.1
Impaired, 80 mgm. of Alcohol in Blood & Driving While Suspended	36	23.0
Narcotic Control Act, or F.D.A. offences	14	9.0
Others	27	17.0
	157	100.0

If a satisfactory alternative to imprisonment for default in payment could be found, then it is evident that the prison population could be drastically reduced.

It was suggested to us that some fines should be eliminated for certain violations of provincial statutes, and that the punishment should be the loss of a privilege related to the statutory provision which has been violated. A detailed study of all of the provincial statutes would have to be made in order to determine violations that might be brought within this category. It was also felt by many people that some violations of provisions in provincial statutes should be removed from their criminal context, and they should be treated differently from criminal offences. Mentioned in this category were certain violations of The Companies Act, The Liquor Control Act, The Fuel Oil Tax Act and The Litter Act.

The fact that persons, accused of violations of these acts, usually plead guilty and pay the imposed fine leads some Provincial Court judges to feel that an unnecessary amount of time is being spent in dealing with charges for which violation tickets should be issued.

Because of the wide diversity of offences created by provincial statutes, the Board feels that more specific recommendations cannot be made without a detailed examination of each and every provincial statute. Such a study is beyond the scope of this Board and should be conducted by a body having the staff and knowledge required. We accordingly recommend that this matter be referred to the Institute of

Law Research and Reform for a detailed examination of all Alberta statutes to determine which violations might be removed from a criminal context; which penalties should be related to the withdrawal of privileges conferred by the different statutes; and which violations should call for the issuing of a ticket, similar to those in use for minor traffic violations, rather than the issuing of a summons and the laying of an information.

RECOMMENDATIONS

1. Sentences providing for imprisonment for default in payment of fines for provincial offences should be eliminated whenever possible.

2. A collection agency should be created, as part of the judicial process, to which unpaid fines would be assigned for collection. This agency should be empowered to use any civil remedy available to creditors to enforce payment.

3. A pilot project should be organized in which the option of community work is open to persons who are unable to pay fines.

4. The Institute of Law Research and Reform should be requested to make a detailed study and examination of all provincial statutes with the view to determining:

   (a) the offences that should be removed from a criminal context, and be treated differently from criminal offences;

   (b) the offences which now call for the payment of a fine that might, in the future, call for a loss of privilege relating to the statutory provision that has been violated;

   (c) the offences which now call for the payment of a fine that might be dealt with in the manner contemplated in Section 115(1)(c) of The Municipal Government Act.[4]

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[4]Section 115(1) of The Municipal Government Act R.S.A. 1970 Ch. 246 provides:

115. (1) *The council may by bylaw:*

(c) enact the procedure for payment to the municipal treasurer or other person designated by the council of an amount fixed by by-law, being an amount which may be accepted by the municipality in lieu of proceeding with any punishment by way of prosecution for the contravention of any by-law of the municipality designated by the council.

Item 16 *WHETHER THE PRESENT SYSTEM OF LEVYING FINES AGAINST PERSONS CONVICTED OF TRAFFIC OFFENCES SHOULD BE CONTINUED AND IF NOT, WHETHER A TRAFFIC VIOLATION REPORT SYSTEM SIMILAR TO THAT IN USE IN THE PROVINCE OF BRITISH COLUMBIA SHOULD BE ADOPTED;*

The Board heard some criticism of the imposition of fines for traffic violations, the chief objection being that equal fines place unequal financial burdens on different people. In this sense, fines were claimed to be discriminatory. This discrimination becomes more evident when a term of imprisonment is imposed in default of payment. The person who does not have the money with which to pay the fine is not being imprisoned for the offence. That person is being imprisoned for not having the money with which to pay the fine. In effect, that person is being imprisoned for being poor.

The alternative of linking the penalty for traffic offences with the privilege of driving was suggested and supported in the submissions of the cities of Calgary and Edmonton. It was also supported by the police forces and members of the legal profession in those two cities.

There was support as well for adoption of the point demerit system in effect in British Columbia to which reference will be made below.

The view is widely held that minor traffic offences should be removed from a criminal context to be treated instead as infractions and dealt with in a special way. It is argued that persons charged with minor traffic offences should not be required to present themselves at a criminal court along with those facing charges of an entirely different nature. Nor should they have to wait for hours before their cases are heard. It is said that most people who are served with traffic violation tickets are prepared to admit the offence and pay the fine. If inadvertently, they fail to pay the fine in the prescribed time, they are summoned to appear in court. If they fail to answer the summons, they may be arrested and put in jail, even where minor traffic violations are involved.

An incident reported in a Calgary newspaper on August 22nd, 1974 serves to illustrate the point we wish to make.

A woman was given a summons requiring her to appear in court on May 23rd, 1974 for failing to stop at a red light.

Her husband had a heart attack on May 22nd and was placed under intensive care. As a result, she did not appear in court. She reported to the police on May 25th, a Saturday, and was instructed to return Monday morning, which she did. On reporting to the police, she was directed to the Clerk of the Court's Office, where she was told there were no records relating to her case. She was directed back to the police. There she was arrested under a warrant, and placed in the cells. She remained in the cells until 1:30 in the afternoon. She was then brought before a Provincial Court judge who ordered that she be released. However, she was held in the cells until her papers were processed, and was not released until 4:30 p.m. She entered a plea of not guilty to the charge and was acquitted.

While technically legal, incidents like this bring the administration of justice into disrepute. In the Board's view, there is no justification for the use of such a procedure for minor traffic violations.

In 1973, 24,071 traffic ticket complaints were shown on the court docket in Edmonton. Guilty pleas were entered to 12,141 of these complaints. On August 6th, 1974, the dockets for traffic offences in Edmonton showed 658 charges. Below is a breakdown showing the disposition of these charges:

Guilty pleas	—	391
Not guilty pleas	—	70
Remands	—	197

On the same day in Calgary, there were 452 traffic cases which were disposed of as shown below:

Guilty pleas	—	173
Not guilty pleas	—	152
Withdrawals	—	68
Remands	—	59

Even if it takes only two minutes per charge to adjudicate each of these charges, the 658 + 452 = 1110 charges would require about 40 hours per day of adjudication, and would probably involve the use of about eight courts. Such a volume of minor charges congests the Provincial Court to the detriment of its basic functions and damages its public image. Much of this congestion could be relieved by better opportunities for people to admit violations voluntarily and pay their fines conveniently.

Some people believe that fines from traffic offences provide a lucrative source of revenue for municipal governments. Since the City of Calgary received about $1,300,000 in revenue from traffic fines during 1972, it is assumed by some that traffic police are employed specifically to obtain this revenue. Such an assumption, while invalid, can only lessen respect for the law and for the police.

As noted above, British Columbia has adopted a *point system* to provide sanctions for minor traffic violations. Under this system, different point penalties are prescribed for different types of driving offences. The number of point penalties varies from two to 10. The Superintendent of Motor Vehicles mails a letter to any person who accumulates six points warning that a further offence might lead to the suspension of his or her driver's licence. No further action is taken at that time.

Persons who accumulate nine points for driving offences are given the opportunity to show just cause why their driver's licence should not be suspended. They may request a hearing which will include a review of their driving records. On the basis of these records, and the hearings, the superintendent of motor vehicles decides whether the driver's licence should be suspended, or whether the driver should be placed on probation. Depending on the nature and the number of offences committed, suspensions may be for periods varying from one month to three years.

Officials administering the act in British Columbia assured us that it had reduced the time required of police in dealing with traffic violations, had lessened the congestion in their traffic courts, and had been favourably accepted by the public.

Concern, however, was expressed in the submissions of the Civil Liberties Sub-Section of the Canadian Bar Association, Alberta Branch, and of the Alberta Motor Association about the wide discretion conferred by the British Columbia legislation on the superintendent of motor vehicles with respect to the withdrawal of driving privileges. It was pointed out that this might lead to the arbitrary abuse of discretionary power and might shift the onus of proof from the Crown to the person charged with the offence. It was strongly emphasized that determinations of a judicial nature should be made by a judge in an open court and should not be dealt with by an administrative act.[5]

[5]In the Appendix Max Wyman states why he opposes the use of a traffic violation point system, essentially on the grounds that the goals of such systems are in conflict with the fundamental goals of all legal systems.

It might be noted that in addition to adopting the point system, British Columbia has taken violations of traffic rules out of a criminal context by providing for proceedings of a civil nature.

We have found other attempts are being made to remove the machinery for handling routine traffic violations from a criminal context. In North York, Toronto, a pilot project has been initiated in which informal proceedings for dealing with minor traffic offences have replaced the formal proceedings of the Criminal Division of the Provincial Court.[6] Under this project, a traffic tribunal, operated by the department of highways, was created. A person, who is prepared to admit to having committed a minor traffic offence and who wishes to plead mitigating circumstances, may appear before this tribunal. The appearance is on a drop-in basis and is an alternative to paying a fine or appearing in court. The plea under this project is, *guilty with explanation.*

The hearing is conducted informally in pleasant surroundings in a building not connected with the Provincial Court. It is presided over by a hearing officer who is not a Provincial Court judge. There is no prosecutor except when accident charges are heard. The investigating officer and the offender give their versions of the offence. The hearing is electronically recorded. Upon completion of the hearing, a summary of the offender's driving record is produced on a computer terminal screen. It is then discussed by the hearing officer with the offender.

Before a penalty is imposed, the offender may voluntarily choose to attend a one-hour driver improvement clinic, which is held in the same building. Following the clinic, the offender re-appears immediately before the hearing officer for imposition of a fine. Attendance at the clinic normally will reduce the amount of fine. We were told that it was expected that, in 1974, this project would adjudicate 90,000 minor traffic offences, 6,000 vehicles offences, and 13,000 accident offences. In our opinion, this is indeed a significant project which deserves further study by the Province of Alberta.

RECOMMENDATIONS

1. Minor traffic and parking offences should be removed from a criminal context.

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[6]The project resulted from recommendations of a committee chaired by Chief Judge N. C. Hayes, Provincial Court (Criminal Division).

2. Violations of traffic rules laid down in The Highway Traffic Act and in municipal bylaws should be designated as violations, not as offences.
3. The words *guilty* or *not guilty* should not be used with respect to minor traffic violations and parking offences. They should be replaced by the words *admitted* or *disputed.*
4. For minor traffic violations, or parking offences, there should be one specific fine for each offence.
5. As long as present procedures are used for traffic violations, persons who have been summonsed should not be required to appear for trial providing they pay their fines and the cost of the summons before the date of the trial.
6. Convenient facilities should be provided for payment of fines and penalties. These facilities should be open before, during, and after the usual working hours.
7. Whenever possible, justices of the peace should be appointed to deal with minor traffic violations and offences.
8. Whenever possible, special prosecutors should be used to deal with traffic violations and offences.
9. If possible, tribunals dealing with traffic violations should be located in buildings separate and apart from the buildings of the Provincial Court. The physical facilities should be designed to create an efficient and informal atmosphere.
10. Whenever possible, traffic courts should hold night sittings.
11. Imprisonment on default of payment of fines for traffic violations should be abolished. Provision should be made for the collection of delinquent fines or penalties from resident drivers by adding such fines or penalties to the cost of a driver's operator's licence, or by impoundment of the driver's motor vehicle, or by whatever civil process is available for enforcement of judgment debts.
12. Collection of fines from non-resident drivers should be enforced by impoundment of the motor vehicle involved. The Board recommends that reciprocal legislation be sought with other provinces to permit fines to be dealt with as in recommendation 11 above.
13. Detailed studies should be initiated with respect to the point system for minor traffic and parking offences now being operated in British Columbia and elsewhere.
14. Detailed studies should be initiated with respect to the North York Pilot Project.

Item 17 *WHETHER IT IS DESIRABLE TO TREAT INFRACTIONS OF MUNICIPAL BYLAWS AS OFFENCES IN PROVINCIAL COURTS AND WHETHER THE COLLECTION OF PENALTIES PROVIDED FOR IN BYLAWS FOR SUCH INFRACTIONS SHOULD BE EFFECTED IN THE SMALL CLAIMS COURT OR SOME OTHER COURT OF CIVIL JURISDICTION;*

The view expressed in the submissions of the cities of Calgary and Edmonton is that municipal legislation generally does not receive the same respect from the public as does provincial and federal legislation. Nor do violations of municipal legislation usually receive the attention it is felt they deserve from the Provincial Court. In the words of the Municipal Law Sub-Section of the Canadian Bar Association, Alberta Branch:

Calgary and Edmonton . . . have been frustrated in their attempts to enforce their bylaws.

It was suggested to the Board that Provincial Court judges do not consider municipal bylaws to be important. They were said to be less than enthusiastic in enforcing them, and their attitude was reflected in the imposition of minimal fines. It was also suggested that Crown prosecutors, overburdened with other duties in prosecuting criminal charges, do not devote sufficient time to the preparation of charges of bylaw infractions. Judges and prosecutors are said not to have an understanding of the meaning and importance of some highly technical bylaws, nor to be aware of the important implications of some bylaws. One example cited was the installation of gas heaters without a licence — when such heaters are not properly installed physically, there is a serious danger that a gas leakage might cause death. Such situations call for immediate action.

Whether an electric or gas outlet has been improperly installed is a matter requiring a scientific or technical determination. Municipalities should have the authority to require immediate rectification of improper installations, or, if necessary, to provide the necessary rectifications. In this latter instance, the cost should be charged to the appropriate person. Such a person should, of course, have the right to have the matter reviewed by a civil process, if he or she feels aggrieved.

Municipal bylaws, other than those dealing with traffic, were described to us as *housekeeping* in nature, requiring

enforcement but generally involving law-abiding citizens. This view reinforces the contention that violations of municipal bylaws should be divorced from a criminal context, that they should be designated as violations and be treated as such. In place of imprisonment for default in the payment of fines, it was proposed that the collection of fines be done by the suspension or withdrawal of a licence or permit when applicable, by the addition of the fine to the appropriate tax roll, or by other civil procedures.

There was considerable difference of opinion as to whether there should be special municipal courts to deal with bylaw violations. The creation of a form of administrative board to handle such cases found little support. It was felt that in Calgary and Edmonton a specific judge should try cases involving bylaw violations, and that a special Crown prosecutor should be designated to prosecute such violations.

The city of Calgary canvassed the cities of Vancouver, Regina, Saskatoon, Winnipeg, Toronto, Ottawa, and Halifax to determine the systems they use in dealing with bylaw violations. All use the Provincial Court. However, in Winnipeg, all bylaw prosecutions are tried on the same day, and are held in the same courtroom. Whenever possible they are tried by the same judge, and the same prosecutor is used throughout the day. In Halifax and Ottawa, solicitors from the city solicitors department are used as prosecutors. Vancouver, Regina, and Saskatoon, have city prosecutors who prosecute violations of both provincial and municipal legislation.

It was stated that the city of Calgary does not have enough of these *housekeeping bylaw* prosecutions to warrant the appointment of a city prosecutor to handle them. At present, the city pays the Attorney General's Department $20,000 per year to handle these prosecutions.

The brief of the city of Calgary stated that while the power to issue tickets in lieu of laying formal charges was provided for in Section 115(1)(c) of The Municipal Government Act there was some doubt as to whether this power applied to violations of bylaws that are enacted pursuant to The Planning Act. This is a matter which should be clarified by an appropriate legislative amendment. It was also pointed out that the maximum penalty of $500 provided for under Section 115(1)(a) of The Municipal Government Act for contravention of municipal bylaws is inadequate to cope with violations of a serious nature, particularly when the expenditures of large sums of money are involved.

Provincial Court judges do not have the power to issue restraining orders to people convicted of offences such as discharging pollutants into city sewers. This power is exercised by Supreme Court judges under The Judicature Act. Although some persons recommend the granting of this power to Provincial Court judges, the Board is not persuaded that extension of this power to the Provincial Court is either necessary or desirable.

At present, it is almost impossible to ascertain what provisions of a bylaw are in effect at a particular time. Bylaws are amended frequently, and there is no consolidation of such amendments. The result is that a copy of every relevant amendment, certified by the municipal secretary under the seal of the municipality to be a true copy, must be produced in court in order to comply with the provisions of Section 399 of The Municipal Government Act. When amendments to a bylaw are numerous, it is difficult for the public, for legal counsel, and for presiding judges, to determine what are its precise provisions.

There has not, for example, been an official consolidation of the bylaws of the city of Calgary since 1913. From time to time, the city clerk has produced unofficial consolidations of certain sets of the city's general bylaws. But such unofficial consolidations are not likely to meet the requirements of Section 399 of The Municipal Government Act.

The Board concurs with the proposal of the law department of the city of Calgary that statutory authority be periodically conferred on municipalities to revise and consolidate municipal bylaws. If this proposal comes into effect, Section 399 of The Municipal Government Act should make a certified copy of a revised bylaw acceptable as evidence in court.

It was pointed out by the city of Calgary law department that specific types of bylaws of a transitory or individual nature should be exempted from the consolidation. Bylaws of this type deal with the borrowing of money, mill rates, the authorizing of special grants to organizations and street closures. Bylaws under The Tax Recovery Act and The Tax Expropriation Act fall into the same category.

RECOMMENDATIONS

1. Municipal bylaw violations should be divorced from a criminal context by being designated as *violations* and not as *offences*.

2. The words *guilty* or *not guilty* to alleged bylaw violations should be replaced by the words *admitted* or *disputed.*

3. Imprisonment for non-payment of fines with respect to violations of municipal bylaws should be abandoned and municipalities should have the powers listed below:

   (a) In the case of violations committed under a bylaw under which a defendant holds a licence or permit, a municipality may revoke or suspend any such licence or permit, or withhold the issuance of another new licence or permit, until the fine is paid;

   (b) If the provision of service by the municipality is involved, the municipality may withhold such service until the fine is paid;

   (c) For other violations, a municipality may add the fine to the tax roll of the property involved or collect the fine by a civil process, whichever is deemed appropriate.

4. When a qualified inspector certifies that a danger exists because of a faulty installation of gas, electric, or similar outlets, the municipality should be empowered to rectify the faulty installation at the expense of the owner of the property, and to add the cost of such rectification to the tax roll relating to that property. This recommendation is meant to serve as an illustration of other bylaws that might be treated in a similar fashion. Civil remedies should be made available to people subjected to this procedure.

5. In Calgary and Edmonton, bylaw violations should be heard on a specified day or half-day of the week.

6. Violations should be heard by a justice of the peace designated for that purpose, and violators should be prosecuted by a special Crown prosecutor also designated for that purpose. To provide continuity, the same persons should be employed for those duties over reasonably long periods of time.

7. The power to issue tickets or tags in lieu of laying formal charges, as provided for in Section 115(1)(c) of The Municipal Government Act, should be extended, specifically to the bylaws enacted pursuant to The Planning Act.

8. The maximum fine that may be set under a municipal bylaw should be substantially increased so that serious

offences can be dealt with in a manner that will have a deterrent effect.

9. Statutory authority should be given to municipalities to consolidate and revise municipal bylaws.

10. Upon such authority being granted, Section 399 of The Municipal Government Act should be amended to permit copies of bylaws, as consolidated and revised, to be received as evidence in any court.

Item 18 *SUCH OTHER MATTERS AS MAY BE DEEMED RELEVANT BY THE BOARD OF REVIEW IN ORDER TO ENSURE A FULL AND FAIR INQUIRY AND TO ENABLE IT TO MAKE A REPORT AND SUCH RECOMMENDATIONS AS IT DEEMS FIT.*

This term of reference gives the Board wide latitude. We shall use this latitude to express views which were not specifically mentioned in the preceding terms of reference.

(1) Provincial Court judges, their appointment and removal from office, their salaries, their pensions, and their travelling expenses.

(2) Crown prosecutors, their salaries, their holidays, and their travelling expenses.

(3) Provincial Court clerks in Edmonton and Calgary, their role, their salaries and their training.

(4) Court practice.

(5) Court costs.

(6) The desirability of the Provincial Court being a Court of Record.

(7) Court reporters.

(8) Legal aid.

(9) Appeal by trial de novo.

(10) Court facilities in Edmonton and Calgary.

(11) The application of automation and computerization technologies to the Provincial Court.

(12) The administration of the Provincial Court.

(13) The implementation of this Report.

(1) PROVINCIAL COURT JUDGES

Appointment and Removal from Office

Provincial Court judges are appointed by the Lieutenant-Governor-in-Council on the recommendation of the Attorney General. One of the functions of a Provincial Court Advisory Committee provided for under Section 8(1) of the Provincial Court Act (as amended in 1973) is *at the request of the Attorney General to consider the proposed appointment of provincial judges and to make a report thereon to the Attorney General.* This commitee is made up of three Provincial Court judges and two other persons appointed by the Lieutenant-Governor-in-Council. The Board of Review recommends that the committee be replaced by a *Judicial Council for Provincial Court Judges*, with the following membership:

(1) the Chief Justice of the Trial Division of the Supreme Court of Alberta, or a judge of that division designated by the Chief Justice;

(2) a Chief Judge of the District Court, or a judge of that court designated by the Chief Judge;

(3) the Chief Judge of the Provincial Court, or a judge of that court designated by the Chief Judge;

(4) the President of the Law Society of Alberta, or a bencher designated by the president;

(5) one other person appointed by the Lieutenant-Governor-in-Council.

We are of the view that no appointments of Provincial Court judges should be made until the names of the proposed appointees have been submitted to the Council for consideration and comment. In addition to performing this role, the Council should consider all complaints made against Provincial Court judges. Some complaints might involve the improper behaviour of, or the neglect of duty by, Provincial Court judges. Others might involve the inability of some Provincial Court judges to perform their duties in a satisfactory manner. The Council should refer all complaints to the Chief Judge of the Provincial Court for investigation or to a committee of the Council. After receiving a report of this investigation, the Judicial Council should have the power to make recommendations to the Attorney General.

RECOMMENDATIONS

1. The Provincial Court Advisory Committee provided for in Section 8(1) of The Provincial Court Act should be replaced by a *Judicial Council for Provincial Court Judges* composed of:

   (1) the Chief Justice of the Trial Division of the Supreme Court of Alberta, or a judge of that division designated by the Chief Justice;

   (2) a Chief Judge of the District Court, or a judge of that court designated by the Chief Judge;

   (3) the Chief Judge of the Provincial Court, or a judge of that court designated by the Chief Judge;

   (4) the President of the Law Society of Alberta, or a bencher designated by the president;

   (5) one other person appointed by the Lieutenant-Governor-in-Council.

2. The Council should be empowered:

   (1) to consider and comment on proposed appointments of Provincial Court judges at the request of the Attorney General;

   (2) to receive, and if necessary investigate, complaints with respect to the improper behaviour of, the neglect of duty by, Provincial Court judges, or their inability to perform their duties in a satisfactory manner; and

   (3) to make recommendations to the Attorney General with respect to such complaints, after receiving reports about such complaints from the Chief Judge of the Provincial Court or from a committee of the Council.

3. No appointments of Provincial Court judges should be made until the names of the proposed appointees have been submitted to the Council for consideration and comment.

Salaries and Qualifications

If competent judges are to be attracted to, and kept in, the Provincial Court, their salaries must compare favourably with the earning capacity of lawyers in private practice and in the legal departments of large corporations.

On January 1st, 1975, Provincial Court judges in Alberta received a salary of $30,000 per year. This compares with $34,000 in Ontario, $35,000 in British Columbia, $33,000 for District Court judges, and $38,000 for Supreme Court judges. Amendments to The Judges Act provide for these latter two salaries to be increased to $43,000 and $53,000 respectively. Part-time Provincial Court judges are paid on a per diem basis.

The current salary provisions for Provincial Court judges in Alberta are not in line with what the Board feels should be the normal qualifications of a candidate for a judgeship. A candidate should have had seven years of study in a university, a year of articling, and ten to fifteen years as a member of the bar. He or she should also:

(1) be between 30 and 45 years old;

(2) have achieved some degree of eminence in the legal profession;

(3) have an income of $25,000 per year or more; and

(4) be at an age when qualified members of the legal profession, under present circumstances, might expect to double or even triple their incomes before retirement.

Not only are the salary provisions for Provincial Court judges in Alberta not in line with this demanding list of qualifications, they are such as to give a prospective judge serious doubts about his or her financial future.

Judges are often required to wait about five years before their salaries or stipends are changed. In times of inflation, they suffer a loss in real income the magnitude of which is seldom appreciated by the public. To illustrate: if a judge earning $30,000 has to wait five years for a salary adjustment, with inflation running at eight per cent, his salary will have to be raised to $44,100, and he will have to be given a lump sum settlement of about $34,000 to compensate for the loss of real income during the five-year period. Salary increases of this magnitude, however justified, cause eyebrows to raise. And, although lump sum settlements are coming into being, they are still measured in hundreds, not thousands, of dollars. Under such circumstances, it is possible that the annual real income of judges may actually decrease, not increase, with the years.

It is evident then that persons who are considering appointment as Provincial Court judges are a select group

who must weigh the consequences of a change of career just at a time when they are becoming firmly established in the legal profession. Obviously the prospects opened by such a change must be made attractive.

RECOMMENDATIONS

1. The salaries of Provincial Court judges should be substantially increased and, if possible, these salaries should be protected against inflation.
2. Salaries should be high enough to induce qualified lawyers between the ages of 30 and 45 to consider seriously accepting positions as judges.
3. Salaries should be adjusted annually in such a way as to ensure that the real income of judges increases from year to year, as long as the Canadian per capital gross national product is increasing.

Pensions

Full-time Provincial Court judges under 65 years of age come under The Public Service Management Pension Act. Judges who were over 65 years of age at the time they became eligible to participate in that plan remain under The Public Service Pension Act.

The former act applies to employees designated by the minister administering the act as holding management positions, or to specific employees who are designated individually by the minister for the purposes of the act. The act requires every employee to contribute five per cent of salary to the general revenue fund of the Province. The normal pension payable to an employee is an annual amount equal to two per cent of the average of the five highest years of pensionable salary, multiplied by the number of years of pensionable service, up to a maximum of 35 years. This pension is payable to an employee for life. If the employee dies after retirement, a surviving spouse receives 75 per cent of the employee's pension for life, providing they were married at least five years before the death of the employee.

With the number of alternatives that are offered, this is an excellent plan, and certainly ranks among the better pension plans in Canada. Nevertheless, it does not meet the particular needs of Provincial Court judges.

In other branches of the Civil Service, it would not be exceptional for a person to enter the Service at the age of

25, or younger, and fulfill the maximum allowable years of pensionable service by the age of 60, five years before the conventional age of retirement. But it would indeed be exceptional for a person to attain the qualifications required of a Provincial Court judge by the age of 25.

For a person accepting a position as a Provincial Court judge at the age of 45, the maximum number of pensionable years of service would be 20, and the Public Service Pension Plan would yield a pension of 40 per cent of the average of the five highest years of salary. Other jurisdictions have recommended 50 per cent for 10 years of service. With the qualifications required of a Provincial Court judge, one should expect most appointments to such a position to be closer to the age of 40 than they would be to the age of 30. Although the Board of Review is prepared to suggest a pension plan for Provincial Court judges different from the Public Service Pension Plan, no plan should be formulated without a consultation with the judges themselves. For illustration only, we suggest the following guidelines for the formulation of such a plan:

1. The pensions of Provincial Court judges should be removed from The Public Service Pension Act and placed under The Provincial Court Act;
2. Judges should make an annual contribution to the pension fund;
3. For those who retire at the age of 65, after 10 years of service, the pension should be 50 per cent of the salary of the last working year;
4. For those who retire at the age of 65, after 20 or more years of service, the pension should be 70 per cent of the salary of the last working year;
5. For those who retire at the age of 65, after at least 10 but less than 20 years of service, the pension should be calculated on a pro-rated basis;
6. Other alternatives, say for example early retirement, should be calculated on an actuarial or some other basis.

The Board does not envisage appointments beyond the age of 55.

Expense Allowances

Allowances for the use of a private automobile by a Provincial Court judge are 15 cents a mile for the first 8,000

miles, and 11 cents a mile for additional mileage. The two different rates make no sense to us. A judge should be properly paid for travelling whatever distance is necessary to cover a circuit. There should be one mileage rate which should be adjusted periodically to reflect increasing costs.

RECOMMENDATION

1. While travelling on circuit, a Provincial Court judge should be paid a realistic flat mileage rate for the use of an automobile.

(2) CROWN PROSECUTORS

Salaries, Holidays and Expense Allowances

The following statement on the conditions of employment of Crown prosecutors in Provincial Courts appears in the submission of the Law Society of Alberta and the Canadian Bar Association, Alberta Branch:

> *The Alberta Legal Community is strongly of the view that the Prosecutors are overworked and underpaid and, as a consequence, very able and competent Counsel have a tendency to either choose other forms of employment or, leave the prosecutorial staff after a very short period of time.*

As stated earlier in this Report, the conditions of employment of prosecutors should be so attractive that the best graduates of our law schools, and the ablest counsel in practice, will seriously consider an appointment as a Crown prosecutor. The Attorney General should then have less difficulty in securing the services of all the competent prosecutors required.

The scale of salaries for Crown prosecutors in Alberta compares unfavourably with the corresponding scales of the federal government, of the Province of Ontario, and of the Province of British Columbia.

On January 1st, 1974, the salary scale of the federal government for Crown counsel, was as follows:

Legal Counsel I	—	$12,000 - $21,700
Legal Counsel II	—	$17,400 - $32,000
Legal Counsel III	—	$32,250 - $42,500

On April 1st, 1974, the British Columbia salary scale for Legal Officers was as follows:

Legal Officer I	—	$13,395 - $16,320
Legal Officer II	—	$18,770 - $22,080
Legal Officer III	—	$24,290 - $29,810
Legal Officer IV	—	$27,600 - $30,910
Legal Officer V	—	$30,910 - $36,430

On November 7th, 1974, the Ontario salary scale was as follows:

Legal Officer 1	—	$13,323 - $17,202
Legal Officer 2	—	$17,343 - $23,711
Legal Officer 3	—	$19,228 - $24,283
Legal Officer 4	—	$22,869 - $25,691

Legal Officer 5	—	$25,079 - $28,149
Legal Officer 6	—	$28,138 - $32,202
Legal Officer 7	—	$30,093 - $34,462
Legal Officer 8	—	$31,744 - $36,352

On January 1st, 1974, Alberta established a single class of legal counsel to replace the former classes of Crown Solicitors I, II and III and Crown Counsel I, II and III. The salary scale, based on years of experience, was as follows:

Assessed Legal Experience	*Salary (Annual)*
Nil	$12,168
½	$13,332
1	$14,640
2	$16,068
3	$17,628
4	$19,320
5	$21,240

Crown Counsel IV has now been replaced by a new classification, Senior Officer II (d), with a salary range of $19,836 to $29,400.

Although the starting salary for Crown prosecutors in Alberta is slightly higher than that for Legal Counsel in the service of the federal government, the maximum salary paid in Alberta falls far behind the corresponding salary paid by the federal government. Moreover, the starting salary for Crown prosecutors in Ontario and British Columbia is at least $1,000 more than the corresponding salary in Alberta. When the corresponding maximum salaries are reached, this disparity increases to approximately $7,000. The Board feels that this progressive disparity between the salaries paid to Crown prosecutors in Alberta and the corresponding salaries paid in Ontario and British Columbia should be remedied.

Until they have served for 15 years, Crown prosecutors in Alberta are entitled to three weeks' annual vacation; after that, they are entitled to four weeks. Members of the legal profession in private practice are usually allowed four weeks' annual vacation. The Board feels that the policy with respect to annual vacations for Crown prosecutors should correspond to the policy in effect among members of the legal profession, rather than to one designed for people who have a strictly limited work day.

The same arguments can be advanced for automobile expenses for Crown prosecutors as were advanced for Provincial Court judges.

RECOMMENDATIONS

1. Salaries paid Crown prosecutors in Alberta should be as high as the corresponding salaries paid Crown Counsel by the federal government, and as high as the corresponding salaries paid Legal Officers filling the role of Crown prosecutors in the other provinces.
2. These salaries should be subject to annual review and adjustment.
3. A policy should be introduced by means of which Crown prosecutors are allowed study and sabbatical leaves.
4. Crown prosecutors should be given four weeks' annual vacation without regard to years of service.
5. While travelling on duty, Crown prosecutors should be paid for full mileage at a mileage rate that reflects current operating costs.

(3) PROVINCIAL COURT CLERKS IN EDMONTON AND CALGARY

Salaries

We have dealt with the role of the Provincial Court clerk in rural areas in Item 8 of this Report. Our observations on this role also apply to clerks who accompany a Provincial Court judge on circuit. Sometimes, clerical staff in judicial centres, other than Edmonton and Calgary, are placed under the supervision of the Clerk of the Supreme and District Courts. Other times, such a staff is directly supervised by a Provincial Court judge. In either case, the conditions of employment of such persons are quite different from the corresponding conditions of employment of the clerical staff who work in Edmonton or Calgary. In the matter of salaries, however, all clerical staff, who work in the Provincial Court, have the same salary classifications. On this subject, our remarks apply to all such clerical staff.

The efficient operation of a court depends upon the performance of the clerical staff. In Calgary and Edmonton there is a shortage of competent clerical staff. This shortage is due to the heavy workload, to the multiple responsibilities of the positions, and to the inadequate salaries being paid to clerical staff. From January 1st to September 30th, 1974, there was, in Edmonton, a 47 per cent changeover in the Provincial Court clerical staff. During this same period, there was a staff shortage for 94 per cent of the time. There was an average of three vacancies for almost two-thirds of that time. The data given below are for November 14th, 1974.

Judicial Clerk	1220 0424	Vacant 31 work days
Judicial Clerk	1220 0403	Vacant 24 work days
Junior Clerk	1220 0925	Vacant 41 work days
Judicial Clerk	1220 0606	Vacant 63 work days
Clerk I - II	1220 0430	Vacant 49 work days
Clerk I - II	1220 0416	Vacant 31 work days
Clerk Typist I - II	1220 1003	Vacant 67 work days— STILL VACANT
Clerk Typist I - II	1220 0916	Vacant 39 work days— STILL VACANT

The duties to be performed by clerical staff require a high degree of competency, responsibility, and judgment. These duties will not be properly performed if the staff is consistently overworked and underpaid. The degree of pressure under which these people work was described forcefully by David

L. Paul, Clerk of the Provincial Court in Calgary:

> *The Clerk's offices in Edmonton and Calgary process tens of thousands of documents annually, are always confronted by immediate deadlines, and handle millions of dollars. They are not tranquil government offices going about things in a leisurely civil-service fashion — but are busy high pressure places where the slightest mistake can cause swift and serious harm. Hours of work are not stable like those of other civil servants. If Court is in session the staff must remain until completion and then complete the documentation. These instances cannot be predetermined. If one has an engagement it must be cancelled and other arrangement made. This differs from most civil servants as their overtime work is predetermined. Immediate and substantial improvements in salaries are necessary if the Clerk's offices are to function in a satisfactory way.*

The salary scale for court clerks in Alberta compares unfavourably with the corresponding scales of Ontario and British Columbia.

On November 7th, 1974, the Ontario monthly salary scale for Court Clerks was:

Lowest group	$ 784 - $ 917
Middle group	$ 951 - $1,100
Highest group	$1,068 - $1,248

On October 1st, 1974, the British Columbia monthly salary scale for Court Clerks was as follows. The bracketed data show the corresponding scale that came into effect on January 1st, 1975.

C.C. 1	— $657 - $ 779	($ 754 - $ 857)
C.C. 2	— $754 - $ 899	($ 857 - $ 982)
C.C. 3	— $779 - $ 936	($ 896 - $1,031)
C.C. 4	— $807 - $ 974	($ 917 - $1,060)
C.C. 5	— $935 - $1,133	($1,060 - $1,225)

On September 1st, 1974, the Alberta monthly salary scale for three classifications of Judicial Clerk was:

J.C. I — $583 - $667
J.C. II — $642 - $816
J.C. III — $752 - $961

It should be added that Provincial Court clerks in Alberta are generally classified as Judicial Clerks I or II.

There is a corresponding disparity between the salaries paid other clerical staff in Alberta and British Columbia. The

salary scale shown below was in effect in British Columbia on October 1st, 1974. The scale shown in brackets took effect on January 1st, 1975.

Clerk-Typist I	$594 - $666	($619 - $692)
Clerk-Typist II	$634 - $717	($659 - $746)
Clerk-Steno I	$607 - $682	($632 - $709)
Clerk-Steno II	$649 - $735	($675 - $764)
Clerk-Steno III	$682 - $774	($709 - $805)

The salary scale shown below was in effect in Alberta on September 1st, 1974.

Clerk-Typist I-II	$467 - $654
Clerk-Steno I-II	$494 - $667
Clerk-Steno III	$617 - $784

It should be noted that a $75 per month increase, effective September 1st, 1974, has been included in the data shown above.

It is evident that the salaries paid clerical staff of the Provincial Court are substantially lower in Alberta than in Ontario and British Columbia. The Province of Ontario has made an attempt to rationalize the salaries of court administrative positions by basing them on weighted caseloads, dollar values of the fines collected, and other relevant factors. When the data for the position of Clerk of the Court in Edmonton and in Calgary are classified according to the Ontario system, the results are illuminating. In Edmonton, the Clerk of the Provincial Court has a staff of 42. In 1973, the caseload was 115,924, and fines amounted to $4,031,000. In Calgary, the Clerk of the Court has a staff of 47. In 1973, the caseload was 76,138, and fines totalled $3,869,000. Both Clerks are justices of the peace. Their salaries were $15,468 and $15,768 per year, respectively. In Ontario, their salaries would be between $16,546 and $20,235 per year. Hence, the salaries of the Clerk of the Provincial Court in Edmonton and in Calgary both fall considerably short of what they would be in Ontario.

Although we have used the Ontario classifications for purposes of illustration, we do not have enough information to recommend their adoption.

Training

The wide range of duties of Provincial Court clerks, both in office work and in courtroom work, calls for specialized

training. We suggest that a para-legal diploma program of studies for Provincial Court clerks and clerical staff should be made available in some post-secondary educational institutions in Alberta, and that such a diploma should be a requirement for appointment as either a Clerk or a member of the clerical staff of the Provincial Court.

RECOMMENDATIONS

1. A para-legal diploma program of studies for Provincial Court Clerks and other clerical staff should be offered by some post-secondary educational institutions in Alberta.
2. A diploma in this program should be a requirement for appointment to the positions mentioned above.
3. Training in this program should be made available to the staff now employed in the Provincial Court.
4. A salary classification should be adopted for Provincial Court Clerks and other clerical staff which will ensure that:
   (a) salaries are commensurate with responsibilities; and
   (b) salaries are competitive with the corresponding salaries in other provinces, in business, in the professions, and in provincial Crown agencies.
5. The salaries of the Clerk of the Court in Edmonton and in Calgary should be increased to reflect the special responsibilities of their positions.

(4) COURT PRACTICE

(a) It was reported to the Board that judges before whom an information is sworn sometimes preside at the trial of the accused named in the information. Such a practice should be discontinued.

(b) In Edmonton and Calgary, sentencing usually takes place immediately after an accused pleads guilty to a charge. It was pointed out to the Board of Review that instant sentencing results in sentencing taking place in an atmosphere of haste and confusion, rather than in one of calm and unhurried deliberation. We concur with the suggestion that the imposition of sentence following a plea of guilty should be deferred until the end of the morning or afternoon sitting of the Court.

(c) The practice of using clerks of the administrative staff of the Provincial Court in Edmonton and Calgary, with appointments as justices of the peace, to swear informations, issue search warrants, and hear applications for bail, was strongly condemned by members of the legal profession. In Calgary, two senior clerks, acting in their capacity as justices of the peace, are assigned night-time and weekend bail duties. They have been given no instruction in such duties, and are not supplied with copies of the Bail Reform Act. The granting of bail is a judicial function requiring complete familiarity with the Bail Reform Act, a most complex piece of legislation. Swearing informations and issuing search warrants are also judicial functions that should not be performed by administrative personnel.

Adjournments

A major problem confronting the Provincial Courts in Edmonton and Calgary is the great number of adjournments. The Board had a study made of 100 files chosen at random from the Edmonton Provincial Court records. These files included a total of 36 different offences. The Criminal Code, The Narcotic Control Act, The Food and Drugs Act, and various provincial statutes were involved. The study revealed that there were as many as 43 adjournments in one case, and seven or more adjournments in 25 cases. Arrest warrants for non-appearance had been issued in 18 cases.

One explanation advanced for the great number of adjournments was the non-appearance of accused persons who are issued appearance notices instead of being placed under

arrest. It was suggested to the Board that the number of accused persons at large under the provisions of The Bail Reform Act is increasing at such a rate that the Provincial Court will, in time, no longer be able to cope with the back-log of untried cases. Although this matter lies beyond the scope of this inquiry, we are of the opinion that the matter of adjournments in the Provincial Courts is of sufficient urgency to merit a special study. We suggest that such a study should be made by the Institute of Law Research and Reform.

Some Crown prosecutors suggest that the congestion in the courts in Edmonton and Calgary might be reduced if the daily trial dockets were prepared by the Senior Crown Prosecutor rather than by the presiding docket judge as at present. They argued that Crown prosecutors, being familiar with the various cases to be tried, are in a better position to schedule efficient use of the court's time. In the Supreme Court, trial dates are worked out in advance by Crown prosecutors, and these trial dates are approved in open court by the judge presiding over arraignments. Such a system might be tried as a palliative in the Provincial Court. We feel, however, that this will only partially solve the problem of so many adjournments. We believe that it will be necessary, in larger centres, to have trial dockets prepared by a court administrator.

Bench Warrants

The Criminal Justice Sub-Section of the Canadian Bar Association, Alberta Branch, stated that an unnecessarily rigid procedure is used when a bench warrant is issued against persons who later appear voluntarily. After being required to go to the police sergeant's office, such persons are placed in custody, escorted to the police station, booked in, and confined in the company of other persons under arrest, until their cases are called for trial. In our view, this procedure should not be necessary for people who can give an acceptable explanation for their non-appearance. It is recommended that the Provincial Court follow the procedure of the Trial Division of the Supreme Court. There a person who appears voluntarily is promptly brought before a judge for adjudication of the matter.

Chambers Judge

In Edmonton and Calgary, there is a need for a judge to be available at all times to deal with both routine and emergency matters. In each of these cities, judges should be

designated as duty or chambers judges for periods of perhaps a week at a time. The duty judge would be available to swear informations, set trial dates, issue search warrants and warrants for arrest, hear applications for bail, and hear routine and emergency applications. Duty judges should be on call at night to deal with matters of an urgent nature.

Reports by Provincial Court Judges

Section 609 of the Criminal Code requires all judges and magistrates who preside at criminal trials to report to the Appellate Division of the Supreme Court the reasons for their decisions in all cases which are appealable to the Supreme Court. These reports must be in writing. Judges of the Provincial Court feel that this requirement is discriminatory because no such reports are required of judges of the District or Supreme Courts. The practice probably relates back to the time when most magistrates were not legally-trained and there was no recorded transcript of the proceedings.

Since a Provincial Court judge has an average caseload of 12,000 per year, it is impossible to comply with this requirement in a meaningful way. The Board feels that this is a matter that should be resolved by discussion between the Chief Justice of Alberta and the Chief Judge of the Provincial Court.

Immunity from Prosecution of Provincial Court Judges

Some Provincial Court judges stated that they did not have the same immunity from civil prosecution as do judges in the District and Supreme Courts. In the Board's view, however, the provisions of Section 15 of The Provincial Court Act give adequate protection to Provincial Court judges.

RECOMMENDATIONS

1. The Provincial Court judge who swears an information should not preside at the trial of the person charged with the offence in that information.

2. Following a guilty plea, the sentencing of an accused should be deferred until the end of the morning or afternoon session of the court.

3. Provincial Court judges should be responsible for swearing informations, issuing warrants for arrest, and hearing bail applications. The practice of having Provincial Court clerks perform these functions in their capacity as justices of the peace should be discontinued.

4. In Edmonton and Calgary, the senior Crown prosecutors should be responsible for the preparation of trial dockets, subject to the approval of these dockets by a docket court judge presiding in an open court.

5. When an accused appears for trial at the appointed time, and an application for adjournment is made, a new trial date should be proposed immediately by the Crown prosecutor. The new trial date should be determined then and there by the presiding judge.

6. In Calgary and Edmonton, a judge should be designated as chambers or duty judge and should serve in this capacity for one week. This duty judge should be available throughout the week to swear informations, to issue search warrants and warrants for arrest, to hear applications for bail and other applications, and to attend to matters of a routine nature. The judge should be on call at night to deal with matters of an urgent nature.

7. When persons against whom bench warrants have been issued appear voluntarily and give acceptable explanations for non-appearance, they should be brought promptly before a presiding judge for adjudication of the matter. They should not be taken into custody.

8. A study should be undertaken to determine the causes for the large number of adjournments in the Provincial Court. Such a study should be carried out by the Institute of Law Research and Reform.

(5) COURT COSTS

The imposition of a fine for a summary offence is generally accompanied by the addition of costs. This practice appears to derive from the days when costs were used to compensate lay magistrates for their services, a practice that has been abandoned. Costs then ranged from $.25 to $2.50. Costs now are much higher, and they are expensive to administer. They must be balanced, verified, audited, and fed into a computer in which they take up five data blocks. If they cannot be collected, they have to be written off. All of this is a costly and time-consuming process. It involves a Provincial Court judge and a clerk in rural areas, the clerical staff in the judicial centres, and the government auditing staff.

A departmental study in 1969 disclosed that administrative expenses in handling $40,000 in costs amounted to $60,000. In 1973, $152,000 was assessed in costs, and $12,000 had to be written off. The Director of Accounting Services estimated that it will cost $180,000 to run the Fines and Costs Distributing Centre in 1973. He described costs as *useless, antiquated, and an administrative headache.*

Advantage should be taken of Section 772(2) of the Criminal Code which authorizes a province to dispense with costs for summary convictions under the Criminal Code. Similarly, the province should dispense with costs for offences under provincial statutes.

RECOMMENDATION

1. The practice of imposing costs in the Provincial Court should be abandoned.

(6) COURT OF RECORD

There is wide support among Provincial Court judges, members of the legal profession, and Clerks of the Provincial Court, for the designation of the Provincial Court as a Court of Record.

Various submissions point to practical advantages that would result from such a designation. The most significant are these:

1. The Court would be required to keep a record of every action or matter that came before it. This record would be available for public scrutiny, as is the case when an action or a matter comes before the superior courts;
2. The Court would be required to keep an official record of the proceedings of the Provincial Court;
3. The services of a Clerk would be mandatory in all Provincial Court sittings;
4. Because a Court of Record has to maintain a record of every action that is taken, a Central Registry for these records would have to be provided, and would be available for public scrutiny. This would include, for example, such things as the information sworn in support of an application for a search warrant, the search warrant itself, the return on that search warrant, and a notation as to whether an application had been granted or rejected.

From its own experience, the Board can say that it is extremely difficult to obtain copies of search warrants that have been issued. In connection with the Craig case, referred to earlier, the Board went to the Provincial Court judge involved, the Clerk of the Provincial Court, and the Clerk of the Supreme Court of Alberta in an unsuccessful attempt to obtain a copy of a search warrant. We were equally unsuccessful in our attempts to find from them where a copy could be obtained. Only months later did we finally obtain a copy of the warrant from the Edmonton City Police. A Court of Record could have supplied us with the information requested without delay. If the Board had this much trouble obtaining a copy of one simple document, the plight of a private citizen in this morass can only be imagined.

A Court of Record would record the steps taken with respect to bail applications. Under The Bail Reform Act, an

accused, who has been refused bail by a Provincial Court judge, may apply to a judge of the Supreme Court or of the District Court for a review of the order. If the review results in bail being granted, and the accused is released, there is no provision for transmitting the order granting bail to the Provincial Court clerk to be attached to the information or filed with the information. When the accused next appears, there is nothing on the record to indicate to the Provincial Court judge that the accused was released by an order of a Supreme or District Court judge. It is essential that all persons concerned with a trial should have access to records of all proceedings that have taken place with respect to an accused. This information cannot be made available when the Provincial Court is not a Court of Record.

Making the Provincial Court a Court of Record would confer other advantages. It would resolve the problem of jurisdiction which arises when Provincial Court judges must endorse waivers of their jurisdiction on informations, before other judges can deal with these matters. The differences in practice in this connection that have arisen throughout the province would be eliminated. It might be possible to have legislation changed so that people in rural areas could register Small Claims Court judgments in the Provincial Court, and have them enforced locally. At present, they must register such judgments in the nearest District Court, often at some inconvenience and unnecessary expense. The changes in legislation, mentioned above, are not likely to be obtained unless the Provincial Court becomes a Court of Record. The provision of Rules of Procedure should serve to bring about uniformity of practice in the Provincial Court throughout the province.

In addition, the Clerks of the Provincial Court in Edmonton and Calgary pointed out that a Court of Record has the authority and machinery to:

1. enter documents, sign search warrants, sign warrants of committal, sign probation orders for release, and the like;
2. issue certificates of conviction for the purpose of the Immigration Board or the Parole Board;
3. endorse each information with the disposition of an accused each time the accused appears before the Court, whether, for example, it be a remand, adjournment, or sentence;
4. prepare and sign the returns required by the attorney general's department.

With respect to the first item, it should be borne in mind that matters involving the exercise of judicial discretion, such as issuing a search warrant, should not be delegated to administrative personnel. The powers of the Clerk of the Court must be limited to matters of a procedural nature, and would not extend to the granting of such documents.

By Section 489(1) of the Criminal Code, *a judge who holds a trial under this Part shall, for all purposes thereof and proceedings connected therewith or relating thereto, be a court of record.*

The Provincial Courts of Ontario and British Columbia are designated as Courts of Record in the provincial statutes creating them. The Criminal Division of the Ontario Provincial Court became a Court of Record in 1968, with satisfactory results, including enhancement of the status of the Court.

The Alberta Provincial Court Act of 1971 designated the Provincial Court as a Court of Record, but this provision was repealed in 1973. As a result, the Provincial Court of Alberta is a Court of Record only when offences under Part XVI of the Criminal Code are involved.

The Board of Review has had the advantage of access to a study, by K. A. Cush[7], of the effects of making the Provincial Court a Court of Record. Judge Cush gives consideration to the legal and constitutional implications involved in making such a change. The study indicates that the concept of a Provincial Court of Record is not free from ambiguity, and poses legal and constitutional problems which lie beyond the scope of our review. These problems are capable of solution by legislation and by judicial decision, as in the case of Regina v. Hill[8], in which it was held that the Provincial Court (Criminal Division) of Ontario is not a Court of Record within the meaning of the Habeas Corpus Act, notwithstanding its designation as such in the Provincial Court Act.

We are convinced, however, that the advantages that would accrue from making the Provincial Court of Alberta a Court of Record far outweigh any disadvantages that might arise from limitations imposed on its authority by judicial decisions.

RECOMMENDATION

1. The Provincial Court of Alberta should be designated as a Court of Record.

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[7]Courts of Record and Related Problems by Provincial Judge K. A. Cush.

[8]R. v. Hill 8 C.R.N.S. 124, (1970) 1 O.R. 699, 9 D.L.R. (3d) 32, (1970) 2 C.C.C 264

(7) COURT REPORTERS

The Court Reporters Association stated in their brief that, in spite of a training program instituted in 1968 at the Northern Alberta Institute of Technology, court reporters have not been given professional status and remain in short supply. They are overworked in the cities, and unavailable in rural areas. The Grande Prairie area has solved this latter problem for preliminary hearings by scheduling the appearance of a Provincial Court judge and a court reporter in particular districts on certain days of each month to conduct such inquiries.

The Court Reporters Association attributes the shortage of court reporters in rural areas in Alberta in part to a chronic shortage in the western provinces, and in part to the attractions of the larger cities, which offer higher earnings from transcripts, and amenities not available in rural areas. The association suggests as one remedy for the shortage that court reporters in rural areas be paid higher salaries than their counterparts in the cities.

The association also suggests that more efficient use could be made of the services of court reporters if more time were made available for administering these services. At present, the senior court reporter in Edmonton is paid $80.00 per month for supervising court reporters in the northern half of the province, and his assistant receives $70.00 per month. The money involved comes out of a fund provided by transcript fees, which means that the other court reporters in Edmonton pay for this service. The association recommends that the provincial government make more generous provision for remuneration for the supervision of court reporters.

Court reporters are also unhappy with their pension arrangements. At present, the Pension Board counts 50 per cent of a court reporter's fee as pensionable income. The association asks that total fees be counted for that purpose.

The questions raised above with respect to court reporters should be the subject of further study. In view of the shortage of court reporters, discussion should take place immediately between their association and the attorney general's department.

The association's brief also went into the question of remuneration for typing staff. Typists for court reporters are required to produce a superior grade of work, acceptable

to the Appellate Division of the Supreme Court of Alberta, and acceptable to the Supreme Court of Canada. For example, they must be able to handle technical terms in the fields of medicine, science, engineering, mining, oil production and the like. Yet they are ranked in the lowest classification of typists in the Civil Service, Clerk-Typist I-II. On September 1st, 1974, their salaries ranged from $467 per month to $654 per month. These salaries are so low that court reporters subsidize the typists who work for them out of their own earnings, incredible as this may seem.

A debate between proponents of manual court reporting as opposed to electronic recording was brought to the attention of the Board, and will soon have to be resolved. The pros and cons of electronic recording are considered in some detail later in this Report.

RECOMMENDATIONS

1. Discussions should be held at an early date between representatives of the Court Reporters Association and the attorney general's department, with a view to resolving problems related to:

   (1) the shortage of court reporters in rural areas;

   (2) remuneration for supervision of court reporters;

   (3) pensions for court reporters;

   (4) professional status for court reporters;

   (5) revised salary scales for clerk typists.

(8) LEGAL AID

Legal aid is available in Alberta to persons charged with indictable offences; to persons charged with offences under The Juvenile Delinquents Act, The Extradition Act, and The Fugitive Offenders Act; and to persons charged with summary conviction offences, if there is a likelihood of incarceration or loss of employment.

The Director of the Legal Aid Society observed that the high number of requests for legal aid for appeals is disturbing. These requests, he said, occur where there was no legal aid in the first instance, especially in rural areas where persons accused of indictable offences were often unaware of the availability of legal aid.

In Edmonton and Calgary, the Legal Aid Society has retained the services of a full-time legal aid interviewer who goes to the Remand Centre each weekday at 8:00 a.m. to check as to whether any of the accused require legal assistance. When court opens, the interviewer is present and is available to any accused person who requests legal aid. The applications for legal aid are forwarded to the Legal Aid Office.

The Joint Committee of the Legal Aid Society proposed that persons charged with indictable offences, who are making an initial appearance before a Provincial Court judge, be asked if they are aware of legal aid. They should also be asked if they would like time to retain their own lawyers before a plea is entered, and before an election is made. This proposal has been accepted by the attorney general's department and passed on to the Provincial Court judges.

While this procedure does make known the availability of legal aid, it does so only at the trial stage. However, the need for legal advice first arises at the time of arrest or summons. An accused person should be made aware at that time of the nature of the charges being made, the options open, and the rights granted by The Bail Reform Act. Early advice on these matters is of particular importance to young offenders and to persons from deprived social and educational backgrounds. As has been pointed out, this need is only partially met by the system of legal aid interviewers used in Calgary and Edmonton. An additional weakness in this system is that interviewers are not legally trained, and there is still a delay in obtaining professional legal assistance.

A project undertaken by a group of university law students, who formed an organization under the name Student Legal Services, has made a significant move towards remedying this situation in Edmonton. The services supply legal information and advice free of charge to persons under arrest who cannot afford lawyers and who are ineligible for legal aid. They have a program of regular visits to the jail at Fort Saskatchewan, to interview inmates who have requested some form of legal assistance or advice. They carry out cell interviews every morning on a year-round basis, take applications for legal aid from inmates who are eligible for such aid, and deliver these applications to the legal aid office. They attend the docket court, where they offer advice to accused persons, who are eligible for legal aid, who are not represented by counsel, and who have entered a not guilty plea, and inform them of the services offered by legal aid. They also appear as agents for persons charged with summary offences who do not have counsel. This is a worthwhile project and one which is helping satisfy a great need. It deserves encouragement and support.

The problem of legal aid is more serious in courts held in rural areas, or in remote parts of the province. There, many accused persons do not know how to obtain legal aid, even if they are aware that such aid does exist. In our view, the availability of legal aid should be made known to all who are entitled to obtain it. Moreover, it should be made known at the time of summons or arrest. This objective might be achieved by making it mandatory that every information or summons with respect to an indictable offence be accompanied by a written notice containing the following information:

1. An accused person is entitled to consult a lawyer before further proceedings are held with respect to the charge that is laid;
2. An accused person, without sufficient funds to hire a lawyer, may make application for legal aid;
3. The application forms for legal aid may be obtained from the police;
4. A collect phone call may be made to a legal aid office from anywhere in the province. (A list of telephone numbers should be provided.)

For Edmonton and Calgary in particular, and elsewhere where practicable, the Legal Aid Society should appoint a legally-trained counsel who would be available to give prelim-

inary legal advice to all persons without counsel, including those charged with summary offences.

RECOMMENDATIONS

1. Every information or summons with respect to an indictable offence should be accompanied by a notice containing the following information:

   (a) An accused person is entitled to consult a lawyer before further proceedings are held with respect to the charge that is laid;

   (b) If he or she does not have sufficient funds to hire a lawyer, an application may be made for legal aid;

   (c) The necessary application forms may be obtained from the police;

   (d) A collect phone call may be made to a legal aid office from anywhere in the province. (A list of telephone numbers should be provided.)

2. For Edmonton and Calgary in particular, and elsewhere where practicable, the Legal Aid Society should appoint a legally-trained counsel who would be available to give preliminary legal advice to all persons without counsel, including those charged with summary offences.

We are in agreement with the view expressed by Provincial Court judges and members of the legal profession that the provision of the Criminal Code, by which appeals from summary convictions are heard by a trial de novo, serves to lower the Provincial Court in the public esteem.

The trial de novo seems to say that society expects and even condones the rendering by the Provincial Court of a quality of justice inferior to that rendered by the other courts. More important, we seem to say that in some circumstances the quality of justice rendered by the Provincial Court may be so bad that the complete proceedings of a trial in the Provincial Court will be ignored, and a new trial held, presumably under superior conditions.

Surely the emphasis here is wrong. About 93 per cent of all criminal charges laid are tried in the Provincial Court. It is the Provincial Court that provides most people with their sole experience, if any, with our system of courts. Under these circumstances, the Provincial Court should be the model vehicle by means of which our society expresses its belief in the importance of the legal process. Trial de novo undermines the prestige the Provincial Court should have.

Support for the view that trial de novo constitutes a disparagement of the Provincial Court comes from other sources. To quote, for example, from the *Report on Administration of Ontario Courts*, Ontario Law Reform Commission of Canada, 1973, Part II, page 3:

> *Despite the changes effected in 1968, the status of the Provincial Courts (Criminal Division) in Ontario remains low. The following passage reflects with some accuracy the position of a Provincial Judge under the Criminal Code*:
>
> *The Criminal Code puts him in an inferior position by treating him as a third-class judge—below the Supreme and County Court judge . . . an example of the inferior status of the magistrate as envisaged by the Code is the trial de novo, a procedure which permits either the accused or the Crown to appeal from the magistrate's decision in a summary conviction case and have a complete rehearing of the case by a County Court judge. An absolute right to a rehearing after a trial is surely undermining and unnecessary.*

Since this appeal provision comes within the jurisdiction of the federal government, not that of the provincial government, we would urge that a representation be made to the Minister of Justice to have appeals by trial de novo abandoned.

RECOMMENDATION

1. A representation should be made to the Minister of Justice that the trial de novo procedure be abandoned for appeals from summary convictions.

(10) COURT FACILITIES IN URBAN CENTRES

The Board of Review visited sessions of the Provincial Courts in Edmonton and Calgary. The critical comments about court facilities which follow are based on our direct observations. These comments are not relevant to conditions in smaller centres, where the Provincial Court makes use of the physical facilities of the Supreme and District Courts.

Edmonton Court House

The building at 9720 - 102nd Avenue, in which the Provincial Court functions in Edmonton, was built some 43 years ago for use as a police station. It was converted in part for use as a court house in 1963, and is disgracefully inadequate for the purpose.

The building affords Provincial Court judges few of the facilities that they should have. Judges' offices are scattered throughout the building, some in small and inconvenient inside rooms. Since there is no private access from offices to courtrooms, judges must use hallways frequented by accused persons, witnesses, police, and the general public. Furthermore, since judges have no retiring rooms for use during short adjournments, they must wait in the public hallways or walk back to their offices. The security problem in the hallways is deemed so serious that some judges refuse to wear their legal gowns while traversing them. Finally, judges have no private library, but must share the inadequate library housed in the offices of the Crown prosecutors.

Similarly unsatisfactory are the offices of the Crown prosecutors, several of which are extremely small inside basement rooms without access to private washroom facilities.

The following are other inadequacies noted by the Board:

(1) There is no adequate room for the use of barristers;

(2) There are no rooms in which counsel can interview witnesses;

(3) There are no rooms in which witnesses can wait until their presence is required in court. They must stand in the public hallways;

(4) There is no library available for defence counsel;

(5) The administration facilities are crowded and inadequate;

(6) The room provided for storage of exhibits is also used for stationery supplies. It is much too small, and security is inadequate;

(7) There is no provision for secure storage of drugs which are entered as exhibits.

In addition to housing the Provincial Court, this building houses Edmonton police cellblocks and administrative services. It is also used by the RCMP, by city commissioners, and by the provincial government. Such grossly inadequate facilities are a serious detriment to the administration of justice in the Provincial Court in Edmonton. We understand that plans are under way for a new Provincial Court House in Edmonton, and that, in the meantime, more temporary space has been allocated to the Provincial Court.

Calgary Court House

Planning for the court house at Calgary, known as the Remand Centre and Provincial Court House, was initiated in 1966. A building site at 7th Avenue and 2nd Street S.E. was acquired in 1968. Physical planning began in 1969, and the building was opened for use in August of 1974.

Prisoners remanded for trial are kept in custody on the top two floors and in the basement of this building. The courtrooms are situated in the remaining floors.

In the course of our visit to this building, our attention was drawn to many deficiencies, some of which we understand have been corrected, and others of which are in the course of being corrected. Some of the most significant deficiencies are listed below:

(1) Lighting is poor in the rooms where witnesses wait;

(2) Lighting and acoustics are poor in all of the courtrooms;

(3) Witness boxes are badly located in the courtrooms;

(4) Detention rooms are inconveniently located, resulting in delays in bringing accused persons into court;

(5) In-camera trials are difficult to conduct because the walls separating the courtroom from the rotunda have windows;

(6) Some of the Crown prosecutors' offices are inside rooms and some are poorly finished. Some have unnecessarily high ceilings;

(7) The courtrooms were not designed to be functional;

(8) Provision for security is inadequate:

(a) The elevators used by the judges are sometimes used by police, witnesses, staff, reporters, and accused persons;

(b) The hallways connecting these elevators to the courtrooms are sometimes used by witnesses waiting to be called to testify;

(c) The elevators from the underground parking lot to the judges' floor are unlocked, and are accessible to anyone gaining entrance to the parking area;

(9) The public coffee shop is poorly located:

(a) It is adjacent to, and open to, the area used by Crown prosecutors;

(b) It provides access to the elevators leading to the judges' floor;

(c) A glass partition separates the clerks' general office from the coffee shop and the corridor leading to it, exposing the administrative staff in the office to the view of the general public and the distractions of the coffee shop;

(10) The court reporters have been provided with an open working area with desks separated by shoulder-high movable partitions. The noise level distracts typists who are listening to tape recordings or dictation.

These deficiencies in a recently constructed building could have been foreseen if there had been a meaningful consultation between the architects and those who use such facilities. The advice of judges, the Clerk of the Court, Crown prosecutors, defence counsel, court reporters, and correction officers responsible for security, should be sought and heeded in the planning of a court house.

There is no apparent reason why the functional and security aspects of a building should be incompatible with aesthetic considerations. Simple dignity in a court house is surely preferable to the wasteful ostentation that can be found in the Calgary Remand Centre and Provincial Court House.

We question the wisdom of combining a remand centre with a court house because:

(a) it confuses custody with adjudication, two different functions; and

(b) it creates a potential security problem.

The remand centre should be conveniently close to the court house, but in a separate building.

RECOMMENDATIONS

We suggest the following guidelines for the planning of urban Provincial Court facilities.

1. A court house should be dedicated to the exclusive use of the Provincial Court.
2. The Remand Centre should occupy a separate building, conveniently located near the court house.
3. The court house should be designed to provide security for all who use the building.
4. The design should be functional, and marked by simple dignity, not extravagant ostentation.
5. Most courtrooms should be of moderate size, and all should have good acoustics and lighting.
6. The enclosure in the courtroom should be adequate for the judge, the dais, the clerk, the accused, counsel, witnesses, orderlies, and the police when their presence is necessary for security.
7. Judges should have private entrances to their chambers, entrances which can be controlled by judges' orderlies.
8. Judges should have access to all courtrooms by way of elevators and hallways designed for their sole use.
9. There should be a judges' retiring room, with private washroom, adjacent to each courtroom.
10. There should be well-designed space to house an adequate legal library for the exclusive use of the judges.
11. Crown prosecutors should have ample office space separate and apart from the space provided for others who must use the court house.
12. There should be an adequate library for the exclusive use of Crown prosecutors and defence counsel.
13. Defence counsel should have an adequate retiring room.

14. There should be adequate rooms with washroom facilities for witnesses.

15. There should be rooms for interviewing witnesses by Crown prosecutors and defence counsel.

16. There should be a retiring room for the exclusive use of court orderlies.

17. Court reporters should have separate dictation offices, with particularly good lighting and acoustics.

18. The Clerk of the Court should have a private office with washroom facilities.

19. There should be ample maximum security storage space for exhibits.

20. In the planning of court facilities, there should be meaningful consultation between the architect and those directly concerned with the day-to-day functioning of the courts.

21. The architect should not be given unrestricted discretion in the design of a court house.

(11) AUTOMATION

The Board of Review will not attempt to write a comprehensive report on the application of automation to the Provincial Court. Our purpose in writing this section is to call attention to the immediate possibility of introducing sophisticated recording equipment into the Provincial Court, and to the more remote possibility of using computers to centralize all court reporting.

Recording Equipment

Court reporters have served the legal process well and little criticism should be directed their way. In many ways, their profession is an art. Having said this, it is important that we go on to say that better ways for recording the proceedings of a court have now been devised.

In Montreal, the Board viewed a two-track mechanical recording system capable of taping simultaneously the verbal interchanges taking place in 11 different courtrooms. When the system is complete, it will be able to monitor simultaneously the proceedings of at least 20 different courtrooms. This particular system impressed us in a number of ways. First, the quality of the recording was excellent. In listening to playbacks of tapes, the Board of Review was never in doubt about who was speaking, or what was being said. Second, transcripts of such tapes can be typed by anyone from a pool of typists. With sufficient help, transcripts could be typed on a day-to-day basis, and there need be no backlog. Normally, in manual court reporting, only the person who takes the notes can transcribe them. The reporter could, of course, go to the trouble of dictating notes for a clerk to transcribe, but such a duplication of effort would be time-wasting and still subject to human error. Third, the mechanical recording system does away with an over-dependence on the individual court reporter which can seriously delay and otherwise impede the course of justice.

The problem of delayed transcripts was forcibly set out in an article in *The Albertan* dated November 19th, 1974.

MILLS OF JUSTICE GRINDING SLOWER

Tardy transcripts are troubling the smooth flow of justice in Alberta Supreme Court and have drawn an outraged reaction from the province's chief trial justice.

One provincial court reporter has still not completed transcripts of preliminary inquiry proceedings which occurred

four months ago, according to Crown prosecutor Paul Chrumka.

The unavailability of the documents forced the postponement of more than 20 trials at Alberta Supreme Court's last criminal arraignment of the year, held Monday. About 10 of the cases were recent committals, understandably delaying transcripts. However, others have been completed for months, and the reporters who are holding them up were warned to pull up their socks.

Both defence and Crown counsels require transcripts of evidence to prepare for trial. In total, out of 88 cases heard at the arraignment, 58 were postponed to the next sitting, beginning January 6.

Chrumka told the court several of the uncompleted transcripts are the responsibility of one reporter, who 'has resigned off and on,' and is having difficulty finishing 'either through illness or tardiness.'

Chief Justice J. V. H. Milvain, presiding at the arraignments, was not so lenient. He terms the tardiness 'outrageous, absolutely outrageous,' and suggested the reporter be severely reprimanded.

'I wonder if these court reporters realize they are officers of the court . . . . Charges can't be dropped because some reporter isn't co-operating.'

The article indicates the over-dependence of the appeal procedure on the individual reporter. Martin's Criminal Code, 1972, mentions a case where an appeal was upheld. It states: *. . . on the address of Crown counsel for which no stenographer notes were taken, a conviction for non-capital murder was quashed and a new trial ordered.* It is hardly an act of humanity to delay, possibly for years, the trial of such a serious charge because of human error. Such a waste of time, effort and money could be avoided by good mechanical recording equipment. We were, for example, informed that the State of Alaska has always used automated recording devices, not reporters, in its courts, apparently with satisfactory results.

Initially, the high cost of installation of fail-safe recording machines will prohibit their use except in areas of high population density like Calgary and Edmonton. It may in time be possible to have a communication hook-up between every courtroom in Alberta and a central recording facility, but not in the immediate future.

We are aware that the provincial government has plans for installing modern recording equipment in some of the courtrooms of Alberta. Our recommendations will almost certainly conform with those plans, and we hope that the conversion to mechanical recording of the proceedings in the Provincial Court can be expedited. The Board makes the following recommendations:

(1) In areas of high density population, particularly in Calgary and Edmonton, the best of modern recording equipment should be installed in all courtrooms as soon as possible, together with whatever structural changes may be required;

(2) All new courtrooms should be designed for and wired so that modern recording equipment can be installed, when justified, with a minimum of delay;

(3) Although the installation of sophisticated recording equipment in the courtrooms of rural or remote areas may not now be justified, the use of portable equipment should be considered. Such equipment should be placed in charge of an operator, not the Provincial Court judge. And, even though portable, it should probably not be moved more than is necessary.

Computers

Electronic computation in the modern sense is about 30 years old. The first electronic computer was built at Harvard University during the Second World War, and was designed to perform arithmetical computation at a high speed. Since that time, it has become the custom to speak of generations of computers, each generation showing a substantial improvement over its predecessor.

The electronic computer must, in many ways, be considered to be the miracle of our time. It is doubtful if any other single invention has had such a profound influence on the research capability of our society. After successfully developing high speed computation technologies, computer scientists began to apply similar techniques and technologies to other areas. One of these, the area of information storage and retrieval is of major interest to the courts.

Some computer firms have done considerable research into the application of computers to the legal process, and some problems in court administration have already been solved by the use of computers. It is predictable that many of the so-

called hand operations of the courts will also be computerized in the future. Having said this much, we must add a word of caution, and urge the provincial government to study carefully the administrative procedures of our Provincial Court before making any large expenditures on computer systems.

It will cost $1 million to buy a computer dedicated to the use of the Provincial Court in Edmonton. It will also cost at least $1 million per year to provide for the salaries of the people who will operate it, and for the programs to make the system functional. No province can afford to spend this kind of money without a fair knowledge of the benefits to be received in return.

In the course of its investigations, we were told of one province that made the initial outlay for the purchase of a computer dedicated to the use of its courts, without realizing the annual operating costs that would be involved. As far as we can ascertain, that computer remains essentially idle because the people to operate the system have not been hired. We were also told of another province which seems to have made a major commitment to buy a central computing facility for its courts, in the apparent expectation that it will provide almost instant information about people involved with the law from the cradle to the grave. If it goes through with the purchase, that province may well face a major disappointment. Not only is there a distinct possibility that the facility will not accomplish what is expected of it, but the operating costs will far exceed those projected. Alberta must avoid such costly mistakes.

On page 190 of their book, *Managing the Courts,* E. C. Friesen, Jr., E. C. Gallas and N. M. Gallas, call attention to the need to balance one information storage retrieval system against another before deciding which is right for a particular situation:

> *Planning for automation of particular processes must also consider all potential mechanisms for the accomplishment of the task. Many hardware salesmen are on the road with their particular solution to office problems. An even superficial review of many systems of data storage and retrieval ranging from open-shelf filing to microfilm to computers indicates the range of possibilities to solve one problem. A computer solution to a file cabinet need makes manufacturers wealthy, but does not aid the courts. On the other hand, a file cabinet solution where rapid, ready access to records is essential may be pure waste if the files are unusable.*

Great care must be taken to clarify the objectives of any plan to automate, and to make certain that the particular form

of automation chosen will accomplish those objectives within the budget allocated for the purpose. It was at one time freely claimed that the costs of computation would be greatly reduced with the advent of computers. In money terms, this claim has turned out to be false. What the computer can offer is an increase in the capacity of the system to solve complex problems, with resultant benefits which may or may not justify the cost.

There is no question that our Provincial Court system could make good use of a relatively large central computing facility, but the Board is not prepared to state unequivocably that this facility should be for the sole use of, and controlled by, the Provincial Court. It is possible that the major computer facility now owned by the Alberta government has the capacity to handle all the computer needs of the Provincial Court. Experience has, however, demonstrated that secondary users are often frustrated by lack of effective control over a time-shared facility. Major personality difficulties between users and operators are common and difficult to overcome. It is natural that the minor user, whose work is given a low priority when the computer facility becomes overtaxed, will become dissatisfied with the service received. Because problems of this kind have occurred so often in other computer installations, the possibility of supplying the Provincial Court with its own computer facility is at least worthy of serious consideration.

At the present time, information on the following matters is stored in the provincial government computer:

(1) dates involved in charges;

(2) municipality in which a charge is heard;

(3) location of the court in which the charge is tried;

(4) name of the Provincial Court judge who presides at the trial;

(5) identity of the police force involved;

(6) the act and the section of the act involved in the charge;

(7) warrants that have been issued;

(8) adjournments and remands;

(9) disposition of the charge;

(10) conditions imposed on the payment of fines;

(11) extensions granted for the payment of fines.

Unfortunately, this information is neither complete enough nor accessible enough to serve the purposes for which it was intended when the computer program was set up. Below are listed some of the numerous obstacles to the efficient use of the Alberta government computer by the Provincial Court which were reported to the Board:

(1) It is almost impossible to obtain ready access to the computer for the retrieval of information. It is not possible at the time a sentence is imposed to obtain up-to-date information about whether the offender has outstanding or unpaid fines;

(2) The programs now being used do not make it possible to retrieve information in a reasonable time. About every three months, administrators in the court system are given a computer print-out showing the status of the payment of fines for about four thousand charges, and are asked to verify its accuracy. They invariably find that over 50 per cent of the items in the print-out are out-of-date, because information about the change in status which is already in the computer system is not being retrieved. In essence, the court administrators are called upon to do what the computer should be doing;

(3) Information is stored by number and by charge, not by the name of the accused. There is no way of knowing the number of defendants involved, or of telling when the same person is involved in a multiplicity of charges. The fact that one cannot call information by name makes it almost impossible to give people accused of crimes, or their lawyers, the dates when they are supposed to appear for trial, or any other relevant information that is stored in the computer system;

(4) Information involving cases heard in the small claims court, and charges laid under the Juvenile or Labour Acts, is not stored in the computer system;

(5) The program used to store information about adjournments and remands does not provide for retrieval of information on the number of adjournments and remands already granted;

(6) Information available for use in the issuing of a warrant of arrest is insufficient to enable the arresting police officer to make an unequivocal identification of the person to be arrested. For example, the birth date of the person involved is not on the warrant of arrest.

This list of difficulties is by no means complete. Generally speaking, the difficulties seem to be of two kinds. First, much desirable information is not stored in the data bank of the computer system. Second, information which is stored in the data bank cannot be retrieved in time to make it of use.

If all of the things that have been reported to the Board of Review about the deficiencies of the service supplied by the government computer are true, then the situation is intolerable and should be remedied. One can well see why some Provincial Court administrators are pressing for their own computer facility.

It also appears tragic to the Board that no information seems to be collected concerning the effectiveness of the Provincial Court. Who are the people who become involved with the law? How many of them are poor and/or uneducated? How many of them are native people? What is the rate of recidivism? As we have mentioned before, one of the major needs of our society is the need to know what is actually happening to people who become involved with the law. A modern computer facility could help satisfy this need, and an effective facility should be placed at the disposal of the Provincial Court.

There is no question that the provincial government computer is a costly major facility with the apparent capacity to fulfil the needs of all government agencies. The use of this capacity, however, seems to leave much to be desired, and indeed to be a waste as far as the needs of the Provincial Court are concerned. There can be little justification for storing a vast amount of information that is seldom, or never, used effectively.

In the light of what has been said above, the Board unreservedly recommends as follows:

1. An adequate computer facility should be made available for the use of the administrative personnel of the Provincial Court;

2. Serious consideration should be given to providing a computer system for the use of the Provincial Court, that is a system for the sole use of, and controlled by, those who administer the Provincial Court;

3. No particular computer facility should be bought until the need for that facility has been justified, and the total costs involved are accurately known;

4. Although a study of the computer needs of the Provincial Court is essential, the study should be made by those who administer the Court. The Board of Review recommends against the formation of special committees to study such needs;

5. Information for computers is normally stored in decks or tapes, and no information can be retrieved until some person provides computer time for the deck or tape to be processed. In Ontario, the Board of Review observed a method of information storage that allows retrieval on a continuous access basis. If the Provincial Court is to continue to use the provincial government computer facility, it must be provided with a similar opportunity for continuous access data retrieval.

(12) COURT ADMINISTRATION

It seems strange that business administration, public administration, and hospital administration are recognized areas for study and research, but court administration, involving the expenditure of millions of dollars, has evoked no interest in either the academic or legal community. No university in Canada sponsors research in court administration, nor, as far as we are aware, has any seen fit to introduce a program of studies in court administration at either the graduate or undergraduate level. Yet the Provincial Court badly needs a form of organization that can cope with the complex administrative problems that beset it.

A partial solution to the problems of court administration would be the application of techniques and technologies developed by business administration in general. But this solution would be only partial because of the peculiar nature of the courts and the restraints under which they operate. For example, the basic premise of judicial independence has no parallel in a business organization. Any suggestion that an attempt be made to measure the productivity of individual judges would be unthinkable. Judges are not what the business world would call employees of the court, but independent nominees of the Crown whose individual idiosyncrasies must be taken into account. They are the ultimate authority in the courtroom. If, for example, they rule that a delay of a week, a month, or a year, is necessary for the accomplishment of justice, the administrative procedure must be provided to accommodate that delay.

Another administrative problem arises from the fact that accused persons are not willing clients of the courts. Administrative policy cannot be based on the assumption that they will appear voluntarily for trial. Bail decisions must accordingly be made, warrants of arrest must be issued, and other sanctions may have to be imposed to ensure that they appear for trial. All this means that the administrative organization of the courts must be such as to accommodate these special demands, which have no parallel in other forms of public or private business.

The adversary system places a further constraint on the administration of the courts. Defence counsel are neither employed nor paid by the court. They are paid by the accused, who can arbitrarily dismiss them. Moreover, if lawyers are to act in good faith, they can and should be free to withdraw their services from some cases.

Finally, there are certain basic assumptions implicit in the hierarchical structure of most business or public organizations that are not valid in the structure of the court system. It is assumed that persons providing the services of a business or public organization are normally its employees; are paid by it; are subject to the dictates of its ultimate authority; and can be arbitrarily dismissed by it, with or without compensation. These assumptions are not necessarily valid in the organization of a court.

While admitting that our analysis of the administrative requirements of the courts may be simplistic, it has been detailed enough to convince us that the kind of administrative structure proper to the courts might well prove to be unique. This is not to deny that there are elements common to administrative structures in general which should not be overlooked by those organizing the courts.

The actual planning of an administrative structure for the Provincial Courts should begin with two questions: (1) who will have ultimate authority over the structure; and (2) who should have de facto authority? At the moment, the Attorney General has the ultimate authority, and de facto authority will reside in the person or persons to whom the Attorney General chooses to delegate that authority. Assuming no change in this procedure it is clear to us that the department of the attorney general should create a high level position, which we shall call the *Chief Administrator of the Provincial Court.* The qualifications of candidates for this position should include as a minimum:

(1) an adequate knowledge and understanding of the objectives and operations of the legal process;

(2) a degree in Business Administration and Commerce from a recognized university; and

(3) an adequate knowledge of computers and their application to administrative structures.

The first incumbent would also need to be innovative and persuasive. He or she would be taking over no smooth-running machine, but would be faced with the challenge of devising and introducing a whole new administrative structure. Even with adequate support staff, he or she would have to provide for, and supervise, a long list of administrative functions. The Chief Administrator would be required:

(1) to prepare annual operating budget estimates with substantial supporting evidence of need;

(2) to provide for a modern accounting structure to administer and control the annual operating expenditures of the Provincial Court;

(3) to provide for an effective data bank to be stored in a modern information storage and retrieval system. This would be a major undertaking, since judges, lawyers, governments, Statistics Canada, research workers, and a host of other people and agencies have a desperate need for information, statistical and otherwise, about the Provincial Court. Although some of this information is now available, it is still impossible to obtain data that would allow firm conclusions to be drawn about the effectiveness of the legal process;

(4) to provide an effective space and equipment utilization program. Millions of dollars of space and equipment are now, or soon will be, provided for the use of the Provincial Court. As far as we are aware, no significant studies have been made of the need for, or the uses of, such space and such equipment;

(5) to prepare annual capital budget estimates with substantial evidence supporting the requests for space and equipment;

(6) to administer the space to be built and the equipment to be bought or rented, a most certainly time-consuming activity during the next 10 years. Innovation in the design of space is badly needed. Some experiments will have major effects on the design, use, and cost of the court of the future. Although computers are just making their appearance in the Provincial Court, the need for such equipment is beyond question, and its effective use will generate many problems for solution;

(7) to provide liaison between those who will be users of space and equipment and those who have ultimate authority to provide them. This will not be easy, involving as it does the resolution of the inevitable conflict between the legitimate needs and aspirations of the users and the equally legitimate desire of government to keep down costs;

(8) to meet the needs of the support staff that carries out the functions of the Provincial Court. Since many of the support staff should have professional or paraprofessional status, and will perform unique functions, they will not normally be interchangeable with the per-

sons in any other government agency. For this reason, the Board of Review believes that it is in the best interest of both the Provincial Court and the people who work in it to consider them apart from the remainder of the Civil Service. If they are so considered, the Chief Administrator of the Provincial Court will have to provide mechanisms for collective bargaining; grievance procedures; and all other procedures directed at the welfare of employees;

(9) to assign and supervise the work of the support staff;

(10) to provide mechanisms for the collection, control, and distribution of the special revenues received by the Provincial Court. Fines and court costs now are two sources of these special revenues;

(11) to provide the administrative structure and mechanisms by means of which the Chief Judge of the Provincial Court can assign court duties to judges. As already mentioned, many of the problems generated in this area are problems for which no satisfactory solutions have been found. Overcoming the congestion in the courts, and undesirable delays in disposing of charges, will require research and experimentation;

(12) to recruit qualified staff to work in courtrooms during a trial, and to provide for the many support functions the Provincial Court is expected to perform;

(13) to provide an annual report on the operations of the Provincial Court. To be effective, such a report should be made public; should contain an analysis of the effectiveness of the system; and should make recommendations for improvement.

This list of administrative functions is not exhaustive but is surely sufficient to indicate the formidable nature of the job to be done. Some of these administrative functions are being performed now, and performed well. Others are being performed now, but should be performed better. Still others are not being performed at all.

In recommending that the support staff of the Provincial Court be independent of the Civil Service, the Board of Review implies no criticism of that service. There are at present about 400 full-time employees of the Provincial Court who are providing services of a professional or para-professional nature. Many more are involved indirectly or on a part-time basis. It seems to us to be mandatory that the services provided by the em-

ployees of the courts be independent of other services provided by the government. We feel, for example, that it would be difficult to justify the interruption of court services because of strike action, legal or illegal, over a dispute not directly related to the services those courts provide. We also feel that the economic welfare of the support staff of the Provincial Court would be best served if they belonged to a bargaining unit made up of the support staff of all the courts in the province and quite independent of the Provincial Civil Service.

We would moreover recommend a salary classification that is independent of Civil Service classifications. The level of education, the degree of specialized training, and the nature of the responsibilities devolving upon the support staff of the Provincial Court are in many ways unique. Ontario classifies administrative positions in the Provincial Courts for salary purposes on the basis of weighted comparisons of caseload, dollar volume, and other relevant factors, a reward system which seems to be based on a typical industrial model. Productivity is measured by caseload and revenue is measured in fines. It is our recommendation that this province base its salary classification for administrative employees of the Provincial Court on the following factors:

(1) degree of responsibility;

(2) level of education;

(3) level of specialized training;

(4) experience; and

(5) competency.

The present chaotic state of court administration is of course not peculiar to Alberta. Among the documents which most impressed us in the course of our investigations was a 1967 report from the Commission of the President of the United States on Law Enforcement and the Administration of Justice. The following extract is from pages 32 and 33 of that report, and could be applied to the situation in Alberta as we found it:

> *There is nothing which approaches a comprehensive profile of the offender . . . . There is no agreement among the agencies even as to the volume of business of the Court . . . . There are no statistics on the rate or length of pretrial detention. The incidence of indigency at the court is unknown. There is no comprehensive analysis of the manner in which cases are charged, broken down, or disposed of by the prosecutor. There is no description of sentencing pat-*

tern or of the workloads of individual judges. And there are no reliable statistics on recidivism. In most cities cases are listed in terms of charges rather than defendants, and there is no way to determine how many persons entered the system. Quite often inconsistencies appear between statistics kept by the police and those kept by the courts. In the District of Columbia, for example, 5,000 defendants shown on police records to have reached court do not appear on court records at all. The lack of data makes it difficult to pinpoint critical areas of need, renders comprehensive assessment of the performance of the court impossible, and restricts sound management control over court business.

The need for knowledge about the performance of our Provincial Court is as acute as the need expressed in the passage quoted above, but the capacity of its administrative structure to satisfy this need is minimal. As a move towards rectifying this situation, we repeat the following recommendations:

1. A high-level position, carrying the title *Chief Administrator of the Provincial Court* should be created within the department of the attorney general;

2. The person appointed to the position of Chief Administrator of the Provincial Court should have the qualifications recommended earlier in this brief;

3. The Chief Administrator of the Provincial Court should design an administrative structure for the Provincial Court that will meet the needs of that Court, and should meet the research needs of those people who should properly assess the achievement of that Court;

4. The universities in Alberta should be encouraged to provide graduate programs and research in the field of court administration;

5. The post-secondary educational institutions should design programs of study in the various aspects of court administration. The province should be able to absorb some hundreds of such people for some years to come.

As a last comment, we would like to reiterate that the most pressing need of those who would reform the Provincial Court is for more knowledge about its operation and effectiveness. Without such knowledge, the prime goal of a strong and efficient court administration is not attainable.

(13) IMPLEMENTATION OF THIS REPORT

The Board of Review recommends certain specific changes in policy and procedure for the Provincial Court of Alberta. It also recommends more study and research before other changes are made. So that this work may be carried out in a reasonable time by persons free from other responsibilities, the Board makes the following recommendations:

1. The Government of Alberta should create a temporary agency to be known as *The Provincial Court Reorganization Agency;*

2. The function of this agency should be:

   (a) to initiate and supervise the implementation of the recommendations in this Report;

   (b) to do study and research on these recommendations; and

   (c) to have further study and research done by other agencies where necessary;

3. The agency should have a director and such other staff as is required by the director;

4. The agency should be assisted by an advisory committee drawn from Provincial Court judges, members of the attorney general's department, Crown prosecutors, RCMP, Edmonton and Calgary police, members of the Law Society of Alberta, court reporters, and the clerical staff of the Provincial Court;

5. The director should be employed on a full-time basis, and should be seconded from his or her regular position;

6. The agency should be adequately funded;

7. The agency should be provided with an adequate administrative staff;

8. The powers and duties of the agency should be clearly defined;

9. The agency should be required to report to the Attorney General.

APPENDIX

OBSERVATIONS BY MAX WYMAN ON ITEM 16

WHETHER THE PRESENT SYSTEM OF LEVYING FINES AGAINST PERSONS CONVICTED OF TRAFFIC OFFENCES SHOULD BE CONTINUED AND IF NOT, WHETHER A TRAFFIC VIOLATION REPORT SYSTEM SIMILAR TO THAT IN USE IN THE PROVINCE OF BRITISH COLUMBIA SHOULD BE ADOPTED;

The question as to whether or not the present system of traffic fines should be continued is difficult to answer by *yes* or *no*. I do not oppose fines for some kinds of behavior, and cannot say categorically that the current system of traffic fines should be discontinued. Why should a particular type of behavior be made an offence? If punishment is involved, a fine may be as good as, or better than, any other form of punishment for some particular type of offence. But, if the purpose of the law is to discourage a particular type of behavior, a fine does not normally seem to accomplish that purpose. The lifting of a driver's licence, the impounding of a car, or other forms of punishment, may have more effect than the imposition of a fine. As stated before in this report, it is necessary to try new forms of punishment, to measure their effect, and then to decide whether the innovation accomplishes the purpose of the law.

Although glowing reports are often given about the effects of a Traffic Violation Point System, I was not impressed with the claims made for this system. I believe the major purpose, probably the sole purpose, of such a system is to reduce the number of traffic charges that must be processed by the Provincial Court. If this is correct, there are better ways to accomplish this same purpose. Obviously, removing certain types of behavior from the list of offences defined by The Highway Traffic Act would, at least in these instances, be more effective in the accomplishment of such a purpose.

A Traffic Violation Point System seems to be based on the assumption that there are minor, or even trivial, offences for which it is not worth the while to invoke automatically the use of the legal process. However, if these minor offences occur on a sequential and accumulative basis then this repeated behavior becomes serious enough to warrant adjudication and, upon conviction, punishment. Although this assumption may seem reasonable in the abstract, it is actually difficult to defend either in the abstract or in the concrete.

If energy conservation considerations are ignored, then the choice of a speed limit for a major highway, say 60 miles per hour, is arbitrary. It is false to believe that there is anything safe about a speed of 60 miles per hour in the sense that such a speed poses little or no risk of damage to life or to property. In a collision at this speed, the damage a vehicle might do is equal to the damage that the same vehicle would do if dropped from a height of about 120 feet onto a stationary object at ground level. With cars whose masses are now measured in thousands of pounds, the legal capacity to inflict damage is enormous.

When it sets a speed limit, society says it is prepared to assume the obvious risk involved. At the same time, society makes the decision to punish the excess risk created by driving the vehicle at speeds greater than the allowable speed limit.

The capacity of a moving vehicle to inflict damage is determined by the kinetic energy of the vehicle, a physical quantity that is measured by the formula:

kinetic energy = $\frac{1}{2}$ (mass of the vehicle) (speed of the vehicle)^2.

In seeking a punishment to fit the crime, it would seem reasonable to have the punishment related to the excess kinetic energy of the vehicle. The present system of punishment in Alberta is not based on this concept. Indeed, the present system lacks consistency and has no inner logic. The following table illustrates this lack of consistency and lack of logic:

	SPEED LIMIT 30 MILES PER HOUR		SPEED LIMIT 60 MILES PER HOUR		FINES AND DEMERIT POINTS
	Speed	*% Increase in Kinetic Energy*	*Speed*	*% Increase in Kinetic Energy*	
A	30 m.p.h.	0	60 m.p.h.	0	
	31 m.p.h.	7%	61 m.p.h.	3%	
	32 m.p.h.	14%	62 m.p.h.	7%	
	33 m.p.h.	21%	63 m.p.h.	10%	
	34 m.p.h.	29%	64 m.p.h.	14%	$20
	35 m.p.h.	36%	65 m.p.h.	17%	
	36 m.p.h.	44%	66 m.p.h.	21%	
	37 m.p.h.	52%	67 m.p.h.	25%	2 demerit pts.
	38 m.p.h.	61%	68 m.p.h.	28%	
	39 m.p.h.	69%	69 m.p.h.	32%	
	40 m.p.h.	78%	70 m.p.h.	36%	
B	41 m.p.h.	87%	71 m.p.h.	40%	$30
	50 m.p.h.	178%	80 m.p.h.	78%	3 demerit pts.
C	51 m.p.h.	189%	81 m.p.h.	82%	$75
	60 m.p.h.	300%	90 m.p.h.	125%	4 demerit pts.
D	61 m.p.h.	313%	91 m.p.h.	130%	$150
					6 demerit pts.
	↓	↓	↓	↓	

From the point of view of the excess risk to life and property, the fines and demerit points make no sense at all. In a zone for which a 30 m.p.h. speed limit has been chosen, a speed of 40 m.p.h. produces an excess risk that is 11 times the corresponding excess risk at 31 m.p.h. Yet the fine and number of demerit points are exactly the same in both cases. For group A types of offences, the numerical value of the fine is 10 times the numerical value of the demerit points. For group D type of offences, the number 10 is replaced by 25. What logic is there in a system in which the fine, or money, becomes more important than the demerit points as the speed increases?

It is possible to base a reasonably consistent and logical scheme of fines on the concept of excess risk to life and property, but that is only one small part of a fine and demerit system. Section 142 of The Highway Traffic Act states:

Every person who drives a vehicle on a highway:

(a) without due care and attention; or

(b) without reasonable consideration for the persons using the highway is guilty of the offence of driving carelessly and liable on summary conviction to a fine of not more than $1000 and in default of payment thereof to imprisonment for a term of not more than six months or to imprisonment for a term of not more than six months without the option of a fine.

Whatever careless driving may be, it certainly is considered to be a grave offence. It carries with it fines that might reach $1000, and the possibility of automatic imprisonment for six months. However, the number of demerit points assigned to careless driving is 6, exactly the same number that is assigned to speeding at 30 m.p.h. or more over the speed limit, an offence that carries with it a fine of $150. If careless driving is such a grave offence, then the emphasis should surely be on lifting the driver's licence, not on the revenue to the Province. What quantitative basis can be devised to explain a choice of demerit points for speeding, and the same or a different choice of demerit points for careless driving? Probably the answer is that no such quantitative basis exists.

DEMERIT POINT SYSTEM SCHEDULE

Description of Offence	*Points*
Failing to remain at the scene of an accident	7
Speeding — exceeding limit by more than 30 m.p.h.	6
Careless Driving	6
Racing	6
School bus or vehicle carrying explosives, gas or flammable liquids —	
Failing to stop at a railway crossing	5
Failing to stop for a peace officer	5
Speeding — unreasonable rate	4
Speeding — exceeding limit by over 20 but not more than than 30 m.p.h.	4
Following too closely	4
Failing to stop for a school bus	4
Failing to report an accident	3
Speeding — exceeding limit by over 10 but not more than 20 m.p.h.	3
Improper passing	3
Driving on wrong side of road	3

Description of Offence	*Points*
Driving wrong way on one-way highway	3
Impeding passing vehicle	3
Failing to yield right of way to a vehicle	3
Failing to yield right of way to a pedestrian	3
Failing to stop as directed by a traffic control device or as otherwise required	3
Proceeding when unsafe or unlawful after stopping	3
Stunting	3
Speeding — exceeding limit by up to 10 m.p.h.	2
Traffic Lane Violation	2
Failing to obey instructions of traffic control device	2
Impeding traffic by driving too slowly	2
Failing to signal	2
Improper turns	2
Improper backing	2

Although an inquiry was made of the attorney general's department, I have been unable to find how the demerit numbers were chosen or why they were chosen. The failure of a vehicle carrying explosives to stop at a railway crossing is an offence for which the driver is assessed 5 demerit points. Why is such dangerous behavior assessed the same number of demerit points as failing to stop for a peace officer? I am of the opinion that the assessment of demerit points is arbitrary, and doubt that there are valid reasons for the particular choices that were made.

My analysis indicates that there is a vast room for improvement of the laws controlling vehicles in motion. But improvement in which direction, and for what purpose? If the major purpose of traffic laws is to make the driving public aware of the lethal nature of the weapons that are entrusted to their care, then a Traffic Violation Report System may well run counter to that purpose. If the system of levying fines is dropped, and a total demerit system is adopted, then society again speaks with two tongues. In essence a total demerit system says a certain type of behavior is forbidden, but society does not mean what it says. Only if a certain type of forbidden behavior becomes repetitive will a punishment be involved. Demerit systems depend on laws defining certain types of driving behavior to be offences. Yet that system condones the breaking of the law as long as it is not done too often. Such a system breeds disrespect for the law, and, therefore, in my opinion, something else should be tried.

A good course in driver education, stressing an understanding of the physical laws of motion, would be a positive step in a direction consistent with a desire to induce respect for the law. We would hope that people who drive cars at 90 miles per hour would understand the risk involved if a collison were to occur. If they understand that it takes a minimum distance of about 450 feet to stop a car travelling at 90 miles per hour, they should be better prepared to respect laws forbidding tailgaiting.

Speeding on highways is a perfect example of a problem whose source and remedy lie outside of the law. Although it is probably true that there is no place in Canada that a car can be legally driven at more than 70 m.p.h., Canadians allow cars to be built in, or enter, Canada that can be driven at speeds of 100 m.p.h. or more. This is obviously the source, and only source, of the problem of excessive speeding on the highways. A simple, and probably the only, remedy is to ask the Federal Government to forbid cars from being built in, or entering, Canada that can be driven at any speed higher than 70 m.p.h. One could hardly criticize this solution on the grounds of cost. Indeed, millions upon millions of dollars could be saved in the cost of manufacturing cars if this was a Canadian law. Since there seems to be no difficulty in imposing conservation restrictions, there would seem to be no obvious reason for not imposing a speed restriction. Here is a solution to a serious problem that is simple, effective, would not involve the Provincial Court, and would save millions of dollars; yet it is a solution which no one seems to have the courage to propose seriously. In spite of all the obvious speeding that is done on our highways, we seem to want to be blind, and to throw this problem, among others, into the law, that handy ashcan of society.

The question asked of us in our terms of reference requires an answer that makes a comment about the Traffic Violation Report System in use in the province of British Columbia. Recently, that province introduced a compulsory insurance scheme in which the premium varied as the square of the number of points. Within one month, the number of traffic violations contested in the Provincial Court increased by 200 per cent, effectively destroying the major benefit some people envisaged the Traffic Violation Report System to have. I would answer the question asked of us in the following way:

1. The present system of levying fines against persons convicted of traffic offences is inconsistent and illogical. It does not curtail the driving behavior deemed

to be illegal by our present laws, and, therefore, does not fulfill the fundamental purpose for which such laws are created;

2. The adjudication of violations of traffic laws places an unnecessary burden on the Provincial Court. If these laws are to be retained, then some other form of adjudication should be found;

3. Allowing illegal behavior to go unpunished, until the behavior occurs on a repetitive basis, seems to be inconsistent with the fundamental goals of every system of law. For this reason, I believe that Traffic Violation Report Systems should generally be considered to be unacceptable;

4. A team of experts should be brought together to study all of the laws governing vehicular control. They should study the purpose and enforceability of every law, and the punishments decreed by those laws. Some types of driving behavior might cease to be offences requiring the adjudication of the Provincial Court. Others might cease to be offences.

The following are recommendations that such a team of experts might consider:

(a) No person in Alberta shall be issued a driver's licence without passing a government-supervised course in driver education;

(b) When control by law is not effective, some other method of control should be found. For example, laws concerning level crossings of railway tracks become unnecessary if no level crossings exist. The creation of overpasses and underpasses would remove all the dangers that level crossings create;

(c) Some laws controlling vehicles in motion should be retained. In most cases a form of adjudication not requiring the services of the Provincial Court should be designed. Although traffic courts have been in existence for many years, the conventional Traffic Court is not the type I have in mind;

(d) A system of levying fines against persons convicted of some minor types of traffic offences might be continued. If so, some rational basis should be used to compute the magnitude of the fine. Special facilities should be provided for the payment of fines by those

who admit committing this type of offence. For those who wish to contest the validity of the complaint, a new form of adjudication should be provided.

(e) For more serious offences, say careless driving, punishments related to the privilege should be decreed. Suspension of driving privileges comes immediately to mind. For repeated offences, impounding the car involved might have astonishing results. As far as I can see, a six month term of imprisonment may satisfy a society's need to punish, but I have serious doubts that there is any real gain in such a form of punishment for this type of offence.

(f) In many instances, requiring a person to take a government supervised driver education program might be better than punishment. A certain respect for the law should result from a well-designed driver education program.

(g) A Traffic Violation Report System should not be used, and the Province should abandon its present demerit system.

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